

BREVARD COUNTY LAW LIBRARY  
VIERA, FL

# AMERICAN JURISPRUDENCE

SECOND EDITION

---

A MODERN COMPREHENSIVE TEXT STATEMENT OF  
AMERICAN LAW

STATE AND FEDERAL

COMPLETELY REVISED AND REWRITTEN  
IN THE LIGHT OF MODERN AUTHORITIES AND DEVELOPMENTS

Volume 25

---

**DOMICIL to ELECTIONS § 202**

**2004**

**THOMSON**  
  
**WEST**

*For Customer Assistance Call 1-800-328-4880*

## I. IN GENERAL; DEFINITIONS

### A. DOMICIL

#### Research References

##### *Text References*

Restatement Second, Conflict of Laws §§ 11(2), 13, 14(1), 15, 20

##### *West's Digest References*

Domicile ⇨1

##### *Annotation References*

A.L.R. Digest: Conflict of Laws § 2.3; Domicil §§ 1 to 5

A.L.R. Index: Domicile and Residence

##### *Forms References*

Am. Jur. Pleading and Practice Forms, Domicil §§ 14, 15

##### *Trial Strategy References*

Proof of Personal Jurisdiction in the Internet Age, 59 Am. Jur. Proof of Facts 3d 1

Establishment of person's domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

### 1. In General

## § 1 Generally; definition

#### Research References

West's Key Number Digest, Domicile ⇨1

Objection to probate of will—Ground—No jurisdiction to probate will—Decedent not domiciled in state. Am. Jur. Pleading and Practice Forms, Domicil § 14

Answer, demurrer, or plea in abatement—Personal jurisdiction lacking—No domicile. Am. Jur. Pleading and Practice Forms, Domicil § 15

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

Derived from the Latin “domus,” meaning dwelling house or home,<sup>1</sup> the word “domicil” refers to the place where an individual has a true, fixed, and permanent home,<sup>2</sup> to which he or she intends to return whenever he or she is absent.<sup>3</sup>

#### [Section 1]

<sup>1</sup>McCreary Enterprises, L.L.C. v. Hemmans, 802 So. 2d 807 (La. Ct. App. 5th Cir. 2001), writ denied, 808 So. 2d 345 (La. 2002), reconsideration not considered, 811 So. 2d 940 (La. 2002); State v. Garford Trucking, 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407 (1950).

<sup>2</sup>Andrews v. Andrews, 697 So. 2d 54 (Ala. Civ. App. 1997); Weiler v. Weiler, 861 So. 2d 472 (Fla. Dist. Ct. App. 5th Dist. 2003); Bruns v. Department of State Revenue, 725 N.E.2d 1023 (Ind. Tax Ct. 2000); Oglesby v. Williams, 372 Md. 360, 812 A.2d 1061 (2002); Paulson v.

Missouri Dept. of Revenue, 961 S.W.2d 63 (Mo. Ct. App. W.D. 1998); Palagi v. Palagi, 10 Neb. App. 231, 627 N.W.2d 765 (2001); D.L. v. Board of Educ. of Princeton Regional School Dist., 366 N.J. Super. 269, 840 A.2d 979, 184 Ed. Law Rep. 930 (App. Div. 2004).

A domicil is a person's principal domestic establishment, as contrasted to a business establishment. McClendon v. Bel, 797 So. 2d 700 (La. Ct. App. 1st Cir. 2000).

As to the definition of “home,” see § 10.

<sup>3</sup>Andrews v. Andrews, 697 So. 2d 54 (Ala. Civ. App. 1997); Weiler v. Weiler, 861 So. 2d 472 (Fla. Dist. Ct. App. 5th Dist. 2003); Bruns

Domicil is a relationship that the law creates between an individual and a particular locality or country.<sup>4</sup> It may<sup>5</sup> or may not<sup>6</sup> be synonymous with

v. Department of State Revenue, 725 N.E.2d 1023 (Ind. Tax Ct. 2000); McCreary Enterprises, L.L.C. v. Hemmans, 802 So. 2d 807 (La. Ct. App. 5th Cir. 2001), writ denied, 808 So. 2d 345 (La. 2002), reconsideration not considered, 811 So. 2d 940 (La. 2002); Oglesby v. Williams, 372 Md. 360, 812 A.2d 1061 (2002); Paulson v. Missouri Dept. of Revenue, 961 S.W.2d 63 (Mo. Ct. App. W.D. 1998); D.L. v. Board of Educ. of Princeton Regional School Dist., 366 N.J. Super. 269, 840 A.2d 979, 184 Ed. Law Rep. 930 (App. Div. 2004).

<sup>4</sup>AFCO Steel, Inc. v. TOBI Engineering, Inc., 893 F.2d 92, 15 Fed. R. Serv. 3d 1287 (5th Cir. 1990); McCreary Enterprises, L.L.C. v. Hemmans, 802 So. 2d 807 (La. Ct. App. 5th Cir. 2001), writ denied, 808 So. 2d 345 (La. 2002), reconsideration not considered, 811 So. 2d 940 (La. 2002); Lipman v. Rutgers-State University of New Jersey, 329 N.J. Super. 433, 748 A.2d 142, 143 Ed. Law Rep. 288 (App. Div. 2000).

<sup>5</sup>McGrath v. Kristensen, 340 U.S. 162, 71 S. Ct. 224, 95 L. Ed. 173 (1950); Whitehouse v. C.I.R., 963 F.2d 1 (1st Cir. 1992), as amended, (July 7, 1992); Matter of Appeal in Coconino County Juvenile Action No. J-12187, 180 Ariz. 509, 885 P.2d 197 (Ct. App. Div. 1 1994); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988) (involving a voting issue); Schoof's Estate v. Schoof, 193 Kan. 611, 396 P.2d 329 (1964).

The words "reside" or "resident" mean domicil unless a contrary intent is shown. Oglesby v. Williams, 372 Md. 360, 812 A.2d 1061 (2002).

<sup>6</sup>Eastman v. University of Michigan, 30 F.3d 670, 93 Ed. Law Rep. 121, 1994 FED App. 0259P (6th Cir. 1994) (evaluating residency requirements for student entitlement to tuition reductions); Dunahugh v. Environmental Systems Co., 2 F.3d 817 (8th Cir. 1993) (involving the running of the statute of limitations against residents); People v. McCleod, 55 Cal. App. 4th 1205, 56 Cal. App. 4th 772b, 64 Cal. Rptr. 2d 545 (4th Dist. 1997), as modified on denial of reh'g, (July 16, 1997); Baldwin v. State Farm Fire & Cas. Co., 264 Ga. App. 229, 590 S.E.2d 206 (2003); Russell v. Goldsby, 780 So. 2d 1048 (La. 2000); Horvitz v. Commissioner of Revenue, 51 Mass. App. Ct. 386, 747 N.E.2d 177 (2001); Hughes v. Lucker, 233 Minn. 207, 46 N.W.2d 497

(1951) (involving a statute governing service of process); Aetna Cas. and Sur. Co. v. Williams, 623 So. 2d 1005 (Miss. 1993) (calling residence an entirely different, more flexible concept than domicil); Pruitt v. Farmers Ins. Co., Inc., 950 S.W.2d 659 (Mo. Ct. App. S.D. 1997); Huffman v. Huffman, 232 Neb. 742, 441 N.W.2d 899 (1989); Will of Brown, 132 Misc. 2d 811, 505 N.Y.S.2d 334 (Sur. Ct. 1986); State ex rel. Lee v. Trumbull County Probate Court, 83 Ohio St. 3d 369, 1998-Ohio-51, 700 N.E.2d 4 (1998); State ex rel. Jealous v. Mills, State ex rel. Jealous of Him v. Mills, 2001 SD 65, 627 N.W.2d 790 (S.D. 2001); State Farm Fire and Cas. Co. v. White, 993 S.W.2d 40 (Tenn. Ct. App. 1998); In re Estate of Tolson, 89 Wash. App. 21, 947 P.2d 1242 (Div. 2 1997).

Any place of abode or dwelling place constitutes a "residence," however temporary it may be, while the term "domicil" relates to the legal residence of a person or his home in contemplation of law; as a result, one may be a resident of one jurisdiction although having a domicil in another. Maldonado v. Allstate Ins. Co., 789 So. 2d 464 (Fla. Dist. Ct. App. 2d Dist. 2001).

"Residence," though parallel in many respects to domicil, is something quite different in that the elements of permanency, continuity, and kinship with the physical, cultural, social, and political attributes that inhere in a home are missing. Santeez v. State Farm Ins. Co., 338 N.J. Super. 166, 768 A.2d 269 (Law Div. 2000).

The distinction between "domicil" and "residence" is that residence is a physical fact, while domicil is a matter of intention. Springfield Tp. v. Kim, 792 A.2d 717 (Pa. Commw. Ct. 2002), appeal denied, 573 Pa. 693, 825 A.2d 640 (2003).

"Domicile" and "residence" are not synonymous, except in the context of election laws and laws pertaining to jurisdiction in divorce actions; thus, a person may have several residences, but only one domicil. Farmers Mut. Ins. Co. v. Tucker, 213 W. Va. 16, 576 S.E.2d 261 (2002).

As to the definition of residence, see § 8.

As to the distinction between residence and domicil in attachment proceedings, see Am. Jur. 2d, Attachment and Garnishment § 234.

residence. For purposes of diversity jurisdiction,<sup>7</sup> domicile may be coextensive with citizenship,<sup>8</sup> but one's domicile and national citizenship may differ in other contexts.<sup>9</sup> When a court must determine domicile in order to apply a federal statute, the term is defined with reference to congressional intent.<sup>10</sup>

◆ **Observation:** The overall concept of domicile may have different content and shades of meaning depending upon the context in which it is used.<sup>11</sup>

Generally, "domicil" consists of two elements: residence and intent to remain.<sup>12</sup> As stated otherwise, domicile has two components: an actual residence in a particular jurisdiction, and an intention to make a permanent home in the jurisdiction.<sup>13</sup>

## § 2 Necessity and singularity of domicil

### Research References

West's Key Number Digest, Domicile ⇨1

Proof of Personal Jurisdiction in the Internet Age, 59 Am. Jur. Proof of Facts 3d 1

It is a fundamental legal rule that every person has a domicile at all times.<sup>1</sup> Equally fundamental is the principle that no person has more than one

<sup>7</sup>As to diversity jurisdiction, generally, see Am. Jur. 2d, Federal Courts §§ 425 to 470, 708 to 1034.

<sup>8</sup>Rodriguez-Diaz v. Sierra-Martinez, 853 F.2d 1027 (1st Cir. 1988).

<sup>9</sup>Garcia v. Angulo, 335 Md. 475, 644 A.2d 498 (1994).

The term "citizen" used in the definition of "domicil" is not synonymous with citizenship of the United States. Salvatierra v. Calderon, 836 So. 2d 149 (La. Ct. App. 1st Cir. 2002).

As to the definition of "citizenship," see § 3.

<sup>10</sup>Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989) (interpreting "domicil" for purposes of the jurisdictional provisions of the Indian Child Welfare Act, 25 U.S.C.A. § 1911(a)).

As to choice of law principles, see § 3.

As to 25 U.S.C.A. § 1911(a) dealing with the Indian tribal court's jurisdiction over a child custody proceeding involving an Indian child residing or domiciled within the reservation of the tribe, see Am. Jur. 2d, Indians § 145.

<sup>11</sup>Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 752 A.2d 793, 144 Ed. Law Rep. 1007 (App. Div. 2000), *aff'd*, 167

N.J. 55, 768 A.2d 779, 153 Ed. Law Rep. 296 (2001).

<sup>12</sup>Skieff v. Cole-Skieff, 2003 WL 22111145 (Ala. Civ. App. 2003); Matter of Adoption of Samant, 333 Ark. 471, 970 S.W.2d 249 (1998); Wright v. Goss, 229 Ga. App. 393, 494 S.E.2d 23 (1997); Becker v. Dean, 854 So. 2d 864 (La. 2003), opinion issued, (Sept. 26, 2003).

As to the residence requirement, see § 14.

<sup>13</sup>In re Protest of Brooks, 155 Ohio App. 3d 384, 2003-Ohio-6525, 801 N.E.2d 514 (2d Dist. Miami County 2003).

Domicil requires both physical presence in a place and the intent to make that place one's home. Valentin v. Hospital Bella Vista, 254 F.3d 358 (1st Cir. 2001).

### [Section 2]

<sup>1</sup>McDougald v. Jenson, 786 F.2d 1465 (11th Cir. 1986); Maldonado v. Allstate Ins. Co., 789 So. 2d 464 (Fla. Dist. Ct. App. 2d Dist. 2001); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Newman v. Newman, 558 So. 2d 821 (Miss. 1990); In re Seyse, 353 N.J. Super. 580, 803 A.2d 694 (App. Div. 2002).

Everyone has a domicile, and that domicile is not lost until a new domicile is actually acquired. Horvitz v. Commissioner of Revenue, 51 Mass. App. Ct. 386, 747 N.E.2d 177 (2001).

Every person has a domicile at all times. Restatement Second, Conflict of Laws § 11(2).

domicil at any one time,<sup>2</sup> even if a person may have one or several actual physical residences.<sup>3</sup>

When a person with capacity to acquire a domicil of choice has more than one dwelling place, his domicil is in the earlier dwelling place unless the second dwelling place is his principal home.<sup>4</sup>

### § 3 Law governing determination

#### Research References

West's Key Number Digest, Domicile ⇨1

Generally, the question of domicil is to be determined by the law of the forum state, including choice-of-law principles.<sup>1</sup>

Federal common law controls the determination of domicil for purposes of purported diversity jurisdiction.<sup>2</sup> While useful,<sup>3</sup> choice-of-law principles developed in a forum state will not determine the outcome.<sup>4</sup>

When a court must determine domicil in order to apply a federal statute, the term is defined with reference to congressional intent.<sup>5</sup> In the absence of a congressional definition, federal courts may draw on general principles of state law in order to determine the applicable law, if those principles are consistent with the policy of the statute in question.<sup>6</sup>

<sup>2</sup>Valentin v. Hospital Bella Vista, 254 F.3d 358 (1st Cir. 2001); In re Marriage of Tucker, 226 Cal. App. 3d 1249, 277 Cal. Rptr. 403 (4th Dist. 1991); Wilson v. Butler, 513 So. 2d 304 (La. Ct. App. 1st Cir. 1987); Oglesby v. Williams, 372 Md. 360, 812 A.2d 1061 (2002); Bolton v. Krantz, 54 Mass. App. Ct. 193, 764 N.E.2d 878 (2002); Newman v. Newman, 558 So. 2d 821 (Miss. 1990); In re Seyse, 353 N.J. Super. 580, 803 A.2d 694 (App. Div. 2002); Matter of Estate of Burshiem, 483 N.W.2d 175 (N.D. 1992); In re Estatze of Galada, 1999 SD 21, 589 N.W.2d 221 (S.D. 1999).

Although one may be legally domiciled in different places for different legal purposes, a person is deemed to have only a single domicil for the particular legal purpose for which the concept is then being used. Wit v. Berman, 306 F.3d 1256 (2d Cir. 2002), cert. denied, 538 U.S. 923, 123 S. Ct. 1574, 155 L. Ed. 2d 313 (2003).

No person has more than one domicil at a time. Restatement Second, Conflict of Laws § 11(2).

<sup>3</sup>Andrews v. Andrews, 697 So. 2d 54 (Ala. Civ. App. 1997); Wamsley v. Wamsley, 333 Md. 454, 635 A.2d 1322 (1994); Aetna Cas. and Sur. Co. v. Williams, 623 So. 2d 1005 (Miss. 1993); Amco Ins. Co. v. Norton, 243 Neb. 444, 500 N.W.2d 542 (1993); Santez v.

State Farm Ins. Co., 338 N.J. Super. 166, 768 A.2d 269 (Law Div. 2000); B.R.T. v. Executive Director of Social Service Bd. North Dakota, 391 N.W.2d 594 (N.D. 1986); Farmers Mut. Ins. Co. v. Tucker, 213 W. Va. 16, 576 S.E.2d 261 (2002).

A person may legally reside in more than one state while being legally domiciled in only one state. Bruns v. Department of State Revenue, 725 N.E.2d 1023 (Ind. Tax Ct. 2000).

As to the definition of residence, see § 8.

<sup>4</sup>Restatement Second, Conflict of Laws § 20.

#### [Section 3]

<sup>1</sup>Lange v. Penn Mut. Life Ins. Co., 843 F.2d 1175 (9th Cir. 1988).

In applying its rules of Conflict of Laws, the forum determines domicil according to its own standards. Restatement Second, Conflict of Laws § 13.

<sup>2</sup>Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088 (9th Cir. 1983).

<sup>3</sup>Stifel v. Hopkins, 477 F.2d 1116, 23 A.L.R. Fed. 595 (6th Cir. 1973).

<sup>4</sup>Rodriguez-Diaz v. Sierra-Martinez, 853 F.2d 1027 (1st Cir. 1988).

<sup>5</sup>§ 1.

<sup>6</sup>Mississippi Band of Choctaw Indians v.

## 2. *Types of Domicil*

### § 4 Generally

#### Research References

West's Key Number Digest, Domicile ⇨1

Establishment of person's domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of domicile in foreign jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

The three general types of domicil are domicil of origin,<sup>1</sup> domicil of choice,<sup>2</sup> and domicil by operation of law.<sup>3</sup> Depending upon the laws to be construed or the question involved, domicil may also be classified as domestic or foreign, national, state, county, or municipal.<sup>4</sup>

### § 5 —Domicil of origin

#### Research References

West's Key Number Digest, Domicile ⇨1

Proof of Personal Jurisdiction in the Internet Age, 59 Am. Jur. Proof of Facts 3d 1

A "domicil of origin" is acquired by every person<sup>1</sup> at birth<sup>2</sup> and continues until replaced by the acquisition of another domicil.<sup>3</sup> It is the domicil of the child's parents or of the persons upon whom the child is legally dependent at birth.<sup>4</sup>

Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989) (interpreting "domicil" for purposes of the jurisdictional provisions of the Indian Child Welfare Act, 25 U.S.C.A. § 1911(a)).

As to 25 U.S.C.A. § 1911(a) dealing with an Indian tribal court's jurisdiction over a child custody proceeding involving an Indian child residing or domiciled within the reservation of the tribe, see Am. Jur. 2d, Indians § 145.

#### [Section 4]

<sup>1</sup>As to domicil of origin, generally, see § 5.

<sup>2</sup>As to domicil of choice, generally, see § 6.

<sup>3</sup>Matter of Adoption of T.R.M., 525 N.E.2d 298 (Ind. 1988); Matter of Jacobs, 315 N.J. Super. 189, 717 A.2d 432 (Ch. Div. 1998).

As to domicil by operation of law, generally, see § 7.

<sup>4</sup>Felker v. Henderson, 78 N.H. 509, 102 A. 623 (1917).

#### [Section 5]

<sup>1</sup>Matthews v. Matthews, 141 So. 2d 799, 96 A.L.R.2d 1231 (Fla. Dist. Ct. App. 1st Dist. 1962).

<sup>2</sup>Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); Linardos v. Fortuna, 157 F.3d 945 (2d Cir. 1998); Manthey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991); Greenwood v. Hildebrand, 357 Pa. Super. 253, 515 A.2d 963 (1986).

As to the domicil of infants, generally, see § 40.

The domicil of origin is the domicil which a person has at birth. Restatement Second, Conflict of Laws § 14(1).

<sup>3</sup>Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); Linardos v. Fortuna, 157 F.3d 945 (2d Cir. 1998); Salvatierra v. Calderon, 836 So. 2d 149 (La. Ct. App. 1st Cir. 2002); Manthey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991); In re Olear, 187 Misc. 2d 706, 724 N.Y.S.2d 283 (Sur. Ct. 2001); Greenwood v. Hildebrand, 357 Pa. Super. 253, 515 A.2d 963 (1986).

<sup>4</sup>Yarborough v. Yarborough, 290 U.S. 202, 54 S. Ct. 181, 78 L. Ed. 269, 90 A.L.R. 924 (1933).

◆ **Observation:** Although also referred to as domicil of birth, domicil of origin is the domicil of one's parents at the time of birth and may not necessarily be the actual place of one's birth.<sup>5</sup>

## § 6 —Domicil of choice

### Research References

West's Key Number Digest, Domicile ☞4

Proof of Personal Jurisdiction in the Internet Age, 59 Am. Jur. Proof of Facts 3d 1

A domicil of choice is a domicil chosen by a person to replace his or her former domicil.<sup>1</sup>

◆ **Observation:** The choice involves an exercise of free will<sup>2</sup> and presumes the legal capacity to make a choice.<sup>3</sup>

Domicil of choice, generally, consists of a bodily presence in a particular locality and a concurrent intent to remain there permanently<sup>4</sup> or at least indefinitely.<sup>5</sup>

◆ **Caution:** While intention is a principal feature of domicil of choice, a mere intention without the fact of actual presence in the locality cannot bring about acquisition of a new domicil.<sup>6</sup>

If there is a concurrence of the fact of physical presence at the particular place and the existence of the required attitude of mind, in addition to the requisite legal capacity, a change of domicil takes place.<sup>7</sup>

## § 7 —Domicil by operation of law

### Research References

West's Key Number Digest, Domicile ☞5

A domicil by operation of law is a domicil that the law attributes to a

<sup>5</sup>Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); Yarborough v. Yarborough, 290 U.S. 202, 54 S. Ct. 181, 78 L. Ed. 269, 90 A.L.R. 924 (1933).

#### [Section 6]

<sup>1</sup>State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Newman v. Newman, 558 So. 2d 821 (Miss. 1990).

<sup>2</sup>Godinez v. Jones, 179 F. Supp. 135 (D. P.R. 1959).

<sup>3</sup>Matthews v. Matthews, 141 So. 2d 799, 96 A.L.R.2d 1231 (Fla. Dist. Ct. App. 1st Dist. 1962); Zimmerman v. Zimmerman, 175 Or. 585, 155 P.2d 293 (1945).

A domicil of choice may be acquired by a person who is legally capable of changing his domicil. Restatement Second, Conflict of Laws § 15(1).

As to the capacity of particular persons to acquire domicil, see §§ 27 to 50.

<sup>4</sup>Cicciarella v. Amica Mut. Ins. Co., 869 F. Supp. 488 (S.D. Tex. 1994), rev'd on other grounds, 66 F.3d 764 (5th Cir. 1995); Matter of Adoption of T.R.M., 525 N.E.2d 298 (Ind. 1988); State v. Jones, 202 Neb. 488, 275 N.W.2d 851 (1979).

<sup>5</sup>Perito v. Perito, 756 P.2d 895 (Alaska 1988); Huffman v. Huffman, 232 Neb. 742, 441 N.W.2d 899 (1989).

To acquire a domicil of choice in a place, a person must intend to make that place his home for the time at least. Bernier v. DuPont, 47 Mass. App. Ct. 570, 715 N.E.2d 442 (1999).

<sup>6</sup>§ 14.

<sup>7</sup>Restatement Second, Conflict of Laws § 15(3).

person independently of the person's residence or intention.<sup>1</sup> It applies to infants, incompetents, and other persons under disabilities that prevent them from acquiring a domicile of choice.<sup>2</sup>

## B. OTHER CONCEPTS

### *Statutory References*

8 U.S.C.A. § 1101(a)(33)

### **Research References**

#### *Text References*

Restatement Second, Conflict of Laws §§ 12

#### *West's Digest References*

Domicile ⇌ 1 to 3

#### *Annotation References*

A.L.R. Digest: Conflict of Laws § 2.3; Domicile §§ 1 to 5  
A.L.R. Index: Domicile and Residence

#### *Trial Strategy References*

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

## § 8 Residence; definition and distinctions, generally

### **Research References**

West's Key Number Digest, Domicile ⇌ 2

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

As distinguished from a fixed habitation, "residence" generally refers to an attachment to a place that is temporary, impermanent, or transient.<sup>1</sup> The term "residence" imports having merely an abode at a particular place, which may be one of several places where one is physically present from time to time.<sup>2</sup> On the other hand, it has sometimes been stated that a "residence"

#### **[Section 7]**

<sup>1</sup>District of Columbia v. H. J. B., 359 A.2d 285 (D.C. 1976); Phelps v. Phelps, 241 Mo. App. 1202, 246 S.W.2d 838 (1952); Schillerstrom v. Schillerstrom, 75 N.D. 667, 32 N.W.2d 106, 2 A.L.R.2d 271 (1948).

As to present intention concerning a permanent abode, see § 19.

As to residence as fixing domicile, see § 54.

<sup>2</sup>Rosario v. I.N.S., 962 F.2d 220 (2d Cir. 1992); George H. and Irene L. Walker Home for Children, Inc. v. Town of Franklin, 416 Mass. 291, 621 N.E.2d 376, 86 Ed. Law Rep. 345 (1993).

As to domicile by choice, see § 6.

As to domicile of particular persons, see §§ 27 et seq.

#### **[Section 8]**

<sup>1</sup>Aetna Cas. and Sur. Co. v. Williams, 623 So. 2d 1005 (Miss. 1993); Huffman v. Huffman, 232 Neb. 742, 441 N.W.2d 899 (1989).

"Domicile" means a permanent place of abode, whereas "residence" is not necessarily permanent and may be at some place other than the place of domicile. Wright v. Goss, 229 Ga. App. 393, 494 S.E.2d 23 (1997).

<sup>2</sup>Will of Brown, 132 Misc. 2d 811, 505 N.Y. S.2d 334 (Sur. Ct. 1986); Atassi v. Atassi, 117 N.C. App. 506, 451 S.E.2d 371 (1995).

Generally, residence is the result of or achieved by a person's physical presence and living at a location and does not require an intention to stay permanently in the location.



is a person's fixed place of habitation, from which the person has no present intention of moving.<sup>3</sup>

Residence may or may not be synonymous with domicil.<sup>4</sup> A "chameleon-like" concept,<sup>5</sup> it has been said that residence is something more than a mere physical presence<sup>6</sup> and something less than domicil.<sup>7</sup> It has been stated, in distinguishing between domicil and residence, that domicil involves the intent of an individual, while residence is a matter of objective fact.<sup>8</sup>

Federal immigration law defines "residence" as the place of general abode, which is a person's principal, actual dwelling place without regard to intent.<sup>9</sup>

## § 9 —Legal residence; actual residence

### Research References

West's Key Number Digest, Domicile ⇨2

The law sometimes equates "legal residence" with domicil,<sup>1</sup> while using "actual residence" to refer to one's present physical location.<sup>2</sup>

## § 10 Home

### Research References

West's Key Number Digest, Domicile ⇨3

"Home" is the place where a person dwells and which is the center of his domestic, social, and civil life.<sup>1</sup>

Huffman v. Huffman, 232 Neb. 742, 441 N.W.2d 899 (1989)

<sup>3</sup>Tovar v. Board of Trustees of Somerset Independent School Dist., 994 S.W.2d 756, 136 Ed. Law Rep. 613 (Tex. App. Corpus Christi 1999).

<sup>4</sup>§ 1.

<sup>5</sup>Amco Ins. Co. v. Norton, 243 Neb. 444, 500 N.W.2d 542 (1993).

<sup>6</sup>Guessefeldt v. McGrath, 342 U.S. 308, 72 S. Ct. 338, 96 L. Ed. 342 (1952); In re Estate of Toutant, 247 Wis. 2d 400, 2001 WI App 181, 633 N.W.2d 692 (Ct. App. 2001).

<sup>7</sup>Guessefeldt v. McGrath, 342 U.S. 308, 72 S. Ct. 338, 96 L. Ed. 342 (1952).

<sup>8</sup>McCarthy v. Alexander, 786 So. 2d 1284 (Fla. Dist. Ct. App. 2d Dist. 2001).

<sup>9</sup>8 U.S.C.A. § 1101(a)(33).

As to abode, see § 11.

#### [Section 9]

<sup>1</sup>Dorf v. Skolnik, 280 Md. 101, 371 A.2d 1094 (1977); Vanguard Ins. Co. v. Racine, 224 Mich. App. 229, 568 N.W.2d 156 (1997); Williams v. Clark County Dist. Attorney, 118

Nev. 473, 50 P.3d 536 (2002), as corrected, (July 26, 2002); Matter of Estate of Burshiem, 483 N.W.2d 175 (N.D. 1992); Phillips v. South Carolina Tax Com'n, 195 S.C. 472, 12 S.E.2d 13 (1940).

A person may have several temporary local residences, but can have only one legal residence, and legal residence or "domicil" is the place where a person has a fixed abode with the present intention of making it his or her permanent home. Keveloh v. Carter, 699 So. 2d 285 (Fla. Dist. Ct. App. 5th Dist. 1997).

<sup>2</sup>Kollman v. McGregor, 240 Iowa 1331, 39 N.W.2d 302 (1949).

A person may have an actual residence in one place and a legal residence in another, and a person may have several actual residences, but a person may have only one legal residence or domicil. Williams v. Clark County Dist. Attorney, 118 Nev. 473, 50 P.3d 536 (2002), as corrected, (July 26, 2002).

#### [Section 10]

<sup>1</sup>Restatement Second, Conflict of Laws § 12.

Although sometimes used synonymously,<sup>2</sup> one may abandon a home,<sup>3</sup> or move to other quarters after a home is destroyed,<sup>4</sup> without changing domicile.

## § 11 Abode

### Research References

West's Key Number Digest, Domicile ☞1

Construction of phrase "usual place of abode," or similar terms referring to abode, residence, or domicile, as used in statutes relating to service of process, 32 A.L.R. 3d 112

While some authority construes the term "abode" as synonymous with "domicil,"<sup>1</sup> it has also been said that abode generally differs from domicile.<sup>2</sup> Under this view, "abode" is a more restricted term that denotes a place where a person actually lives.<sup>3</sup> With respect to occupancy, it is less permanent than domicile.<sup>4</sup>

While permitted to have only one domicile,<sup>5</sup> a person may have several abodes.<sup>6</sup>

## § 12 Citizenship

### Research References

West's Key Number Digest, Domicile ☞3

When used to refer to a person's relationship to one of the states of the United States, "citizenship" is generally synonymous with domicile, whether for the purpose of determining jurisdiction of a federal court,<sup>1</sup> for the purpose

<sup>2</sup>*Whitehouse v. C.I.R.*, 963 F.2d 1 (1st Cir. 1992), as amended, (July 7, 1992); *Maldonado v. Allstate Ins. Co.*, 789 So. 2d 464 (Fla. Dist. Ct. App. 2d Dist. 2001); *McCreary Enterprises, L.L.C. v. Hemmans*, 802 So. 2d 807 (La. Ct. App. 5th Cir. 2001), writ denied, 808 So. 2d 345 (La. 2002), reconsideration not considered, 811 So. 2d 940 (La. 2002); *Hanson v. Hanson*, 150 Neb. 337, 34 N.W.2d 388 (1948).

A person's "domicil" is ordinarily the place where he or she has his home; moreover, it is the place that the law recognizes as defining a person's status for census purposes and voter registration. *Bolton v. Krantz*, 54 Mass. App. Ct. 193, 764 N.E.2d 878 (2002).

A person's domicile is a permanent home from which he or she does not intend to move. *Lipman v. Rutgers-State University of New Jersey*, 329 N.J. Super. 433, 748 A.2d 142, 143 Ed. Law Rep. 288 (App. Div. 2000).

<sup>3</sup>*Newman v. Newman*, 558 So. 2d 821 (Miss. 1990).

<sup>4</sup>*State v. Stalnaker*, 186 W. Va. 233, 412 S.E.2d 231 (1991).

### [Section 11]

<sup>1</sup>*Welch v. Shumway* (State Report Title: *Welsh v. Shumway*), 232 Ill. 54, 83 N.E. 549 (1907); *Berryhill v. Sepp*, 106 Minn. 458, 119 N.W. 404 (1909); *Pope v. Pope*, 1926 OK 19, 116 Okla. 188, 243 P. 962 (1926).

<sup>2</sup>*Erwin v. Benton*, 120 Ky. 536, 27 Ky. L. Rptr. 909, 87 S.W. 291 (1905); *In re Adoption of Mullins*, 219 Tenn. 666, 412 S.W.2d 896, 33 A.L.R.3d 168 (1967); *Grant v. Lawrence*, 37 Utah 450, 108 P. 931 (1910).

<sup>3</sup>*In re Adoption of Mullins*, 219 Tenn. 666, 412 S.W.2d 896, 33 A.L.R.3d 168 (1967); *Grant v. Lawrence*, 37 Utah 450, 108 P. 931 (1910).

<sup>4</sup>*Fowler v. Fowler*, 156 Fla. 316, 22 So. 2d 817 (1945); *Bicknell v. Herbert*, 20 Haw. 132, 1910 WL 1613 (1910), aff'd, 233 U.S. 70, 34 S. Ct. 562, 58 L. Ed. 854 (1914).

<sup>5</sup>§ 8.

<sup>6</sup>*Hite's Adm'r v. Hite's Ex'r*, 265 Ky. 786, 97 S.W.2d 811 (1936); *Kurilla v. Roth*, 132 N.J.L. 213, 38 A.2d 862 (N.J. Sup. Ct. 1944).

### [Section 12]

<sup>1</sup>*Bank One, Texas, N.A. v. Montle*, 964

of determining jurisdiction of state courts over divorce or alimony actions,<sup>2</sup> or for any other purpose.<sup>3</sup> When used in the sense of nationality or to refer to a person's relationship to a country, however, citizenship may not be the same as domicil.<sup>4</sup> One may be domiciled in one country while a citizen of another.<sup>5</sup>

## § 13 Inhabitancy or habitation

### Research References

West's Key Number Digest, Domicile Ⓒ1

"Inhabitancy" is equivalent to "domicil,"<sup>1</sup> unless that meaning is inconsistent with legislative intent.<sup>2</sup>

The term "habitation" signifies an abode for the moment and is merely a component of the concept of domicil.<sup>3</sup>

## II. ACQUISITION AND ESTABLISHMENT OF DOMICIL, IN GENERAL

### Research References

#### *Text References*

Restatement Second, Conflict of Laws §§ 16, 19

#### *West's Digest References*

Domicile Ⓒ4

#### *Annotation References*

A.L.R. Digest: Domicile §§ 1, 3, 4, 21

A.L.R. Index: Domicile and Residence

## § 14 Generally; physical presence or residence; intention

### Research References

West's Key Number Digest, Domicile Ⓒ4

Generally, one must be physically present or actually reside in a place in

F.2d 48 (1st Cir. 1992); *Ellis v. Southeast Const. Co.*, 260 F.2d 280 (8th Cir. 1958); *Young v. Owens*, 207 F. Supp. 519 (W.D. N.C. 1962); *Scott v. Pennsylvania R. Co.*, 9 F.R.D. 27 (E.D. Pa. 1949).

As to aliens and citizens, generally, see *Am. Jur. 2d, Aliens and citizens*.

<sup>2</sup>*Perito v. Perito*, 756 P.2d 895 (Alaska 1988).

<sup>3</sup>*Enochs v. State*, 133 Miss. 107, 97 So. 534 (1923) (involving the classification of property subject to an inheritance tax).

<sup>4</sup>*Garcia v. Angulo*, 335 Md. 475, 644 A.2d 498 (1994).

<sup>5</sup>*Garcia v. Angulo*, 335 Md. 475, 644 A.2d

498 (1994); *In re Blanchard's Estate*, 176 Misc. 796, 29 N.Y.S.2d 359 (Sur. Ct. 1941).

As to special factors in determining the domiciliary status of aliens, see § 51.

### [Section 13]

<sup>1</sup>*Croop v. Walton*, 199 Ind. 262, 157 N.E. 275, 53 A.L.R. 1386 (1927); *Ness v. Commissioner of Corporations and Taxation*, 279 Mass. 369, 181 N.E. 178, 82 A.L.R. 977 (1932).

<sup>2</sup>*Brown v. Lambe*, 119 Iowa 404, 93 N.W. 486 (1903).

<sup>3</sup>*In re Lesker*, 377 Pa. 411, 105 A.2d 376 (1954).

As to the definition of "domicil," see § 1.

order to acquire a "domicil of choice" there.<sup>1</sup> In this regard, in order to acquire a domicil by choice, these essentials must concur: (1) residence (bodily presence) in the new locality; and (2) an intention there to remain.<sup>2</sup> In other words, there must be a concurrence of the fact and the intent.<sup>3</sup> So long as the residence is actual, the character of the living quarters is immaterial,<sup>4</sup> and even quarters that are normally temporary will qualify.<sup>5</sup> Thus, the dwelling may be a temporary shack,<sup>6</sup> a rented house,<sup>7</sup> a boarding house,<sup>8</sup> a hotel,<sup>9</sup> or the house of a relative or friend.<sup>10</sup>

◆ **Observation:** Domicil may be predicated upon a presence within the state and the requisite intent to make a home there, even if the person has selected no particular locality in the state as a home.<sup>11</sup>

## § 15 Duration of residence

### Research References

West's Key Number Digest, Domicile ⇨4

#### [Section 14]

<sup>1</sup>Ex parte Phillips, 275 Ala. 80, 152 So. 2d 144 (1963).

As to the definition of "domicil of choice," see § 6.

<sup>2</sup>Huffman v. Huffman, 232 Neb. 742, 441 N.W.2d 899 (1989); Smith v. Smith, 205 Or. 650, 289 P.2d 1086, 54 A.L.R.2d 893 (1955);

The concept of domicil involves the concurrence of physical presence in a particular place with the intention to make that place one's home, and that the acquisition of a new domicil is generally understood to require an actual change of residence accompanied by the intention to remain either permanently or for an indefinite time without any fixed or certain purpose to return to the former place of abode. In re Glassford's Estate, 114 Cal. App. 2d 181, 249 P.2d 908, 34 A.L.R.2d 1259 (2d Dist. 1952).

Domicil is established when there is a good-faith intention to establish a particular residence as a permanent home, coupled with the physical move to the new residence, as evidenced by positive, overt acts. Weiler v. Weiler, 861 So. 2d 472 (Fla. Dist. Ct. App. 5th Dist. 2003).

In order to establish domicil, a person must have an actual place of abode in the state with the intention in good faith to live there permanently and without any present intention of changing the home in the future. DeBlois v. Clark, 764 A.2d 727 (R.I. 2001).

Domicil is obtained only through a person's physical presence accompanied by the

present intention to remain indefinitely at a location or site or by the present intention to make a location or site the person's permanent or fixed home. Huffman v. Huffman, 232 Neb. 742, 441 N.W.2d 899 (1989).

As to change of domicil, generally, see §§ 17, 18.

<sup>3</sup>Huffman v. Huffman, 232 Neb. 742, 441 N.W.2d 899 (1989).

<sup>4</sup>Huffman v. Huffman, 232 Neb. 742, 441 N.W.2d 899 (1989).

<sup>5</sup>McLeod v. Allstate Ins. Co., 789 So. 2d 806 (Miss. 2001); Huffman v. Huffman, 232 Neb. 742, 441 N.W.2d 899 (1989).

The establishment of a home in a particular dwelling is not necessary for the acquisition of such a domicil. Restatement Second, Conflict of Laws § 16.

<sup>6</sup>Strackeljohn v. Campbell, 136 Kan. 145, 12 P.2d 829 (1932).

<sup>7</sup>Brewster v. Emlet, 168 La. 326, 122 So. 54 (1929).

<sup>8</sup>Blaine v. Murphy, 265 F. 324 (D. Mass. 1920).

<sup>9</sup>Blaine v. Murphy, 265 F. 324 (D. Mass. 1920).

<sup>10</sup>In re Morey's Estate, 272 Wis. 79, 74 N.W.2d 823 (1956).

<sup>11</sup>Perito v. Perito, 756 P.2d 895 (Alaska 1988) (involving personal jurisdiction on the basis of domicil within the state); Zimmerman v. Zimmerman, 175 Or. 585, 155 P.2d 293 (1945).

As long as a physical presence in the locality and an intention to acquire a domicile there occur concurrently, the length of residence is not a factor in the establishment of domicile.<sup>1</sup> No definite period of time is necessary to create a domicile,<sup>2</sup> unless the law of the jurisdiction provides otherwise.<sup>3</sup> Any period of residence, however short, will suffice when coupled with intent;<sup>4</sup> an individual need only be present for a moment.<sup>5</sup> Furthermore, the habitation need not be continuous or uninterrupted, since temporary absences do not affect domicile.<sup>6</sup>

A domicile once established continues until it is superseded by a new domicile.<sup>7</sup>

### III. ABANDONMENT OR CHANGE OF DOMICIL

#### A. ABANDONMENT OF DOMICIL

#### Research References

##### *West's Digest References*

Domicile ◊4

##### *Annotation References*

A.L.R. Digest: Domicile § 14

A.L.R. Index: Domicile and Residence

### § 16 Generally

#### Research References

West's Key Number Digest, Domicile ◊4

In order to abandon a domicile, a person must choose a new domicile, actually reside in the place chosen, and intend that it be his or her principal and

#### [Section 15]

<sup>1</sup>Perito v. Perito, 756 P.2d 895 (Alaska 1988); Irvin v. Irvin, 182 Kan. 563, 322 P.2d 794 (1958); Smith v. Smith, 205 Or. 650, 289 P.2d 1086, 54 A.L.R.2d 893 (1955).

As to the requirement that physical presence and intention be concurrent, see § 17.

As to the intended duration of abode, see § 20.

As to required length of residence for jurisdiction in a divorce action, see Am. Jur. 2d, Divorce and Separation §§ 203, 204.

<sup>2</sup>Schoof's Estate v. Schoof, 193 Kan. 611, 396 P.2d 329 (1964); Sutton v. Sutton, 128 W. Va. 290, 36 S.E.2d 608 (1945).

<sup>3</sup>In re Eaton's Will, 186 Wis. 124, 202 N.W. 309 (1925).

In the absence of any constitutional or statutory requirement in regard to domicile, the length of the residence is immaterial provided the other elements are found to exist. DeBlois v. Clark, 764 A.2d 727 (R.I. 2001).

<sup>4</sup>Perito v. Perito, 756 P.2d 895 (Alaska 1988).

Domicil can be changed quickly, if the requisite intent is present. Lacroix v. Lacroix, 742 So. 2d 1036 (La. Ct. App. 2d Cir. 1999), writ denied, 752 So. 2d 167 (La. 1999).

<sup>5</sup>Garcia v. Angulo, 335 Md. 475, 644 A.2d 498 (1994).

<sup>6</sup>§ 24.

<sup>7</sup>Restatement Second, Conflict of Laws § 19.

permanent residence.<sup>1</sup>

An intention to abandon an established domicile and the actual abandonment of it are necessary but not sufficient for the acquisition of a new domicile.<sup>2</sup> An existing domicile cannot be lost by abandonment alone, even if there is an intent to acquire a new one; the existing domicile continues until a new one is in fact gained.<sup>3</sup>

## B. CHANGE OF DOMICIL

### Research References

#### *Text References*

Restatement Second, Conflict of Laws §§ 18

#### *West's Digest References*

Domicile Ⓒ4

#### *Annotation References*

A.L.R. Digest: Domicile §§ 14 to 21

A.L.R. Index: Domicile and Residence

#### *Forms References*

Am. Jur. Pleading and Practice Forms, Domicil § 13

#### *Trial Strategy References*

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

### 1. In General

## § 17 Generally

### Research References

West's Key Number Digest, Domicile Ⓒ4

Change of domicile as affecting character of property previously acquired as separate or community property, 14 A.L.R. 3d 404

Acquisition of domicile by sending wife or family to new home, 31 A.L.R. 2d 775

Complaint, petition, or declaration—Allegation—Defendant's change of domicile after accrual of cause of action. Am. Jur. Pleading and Practice Forms, Domicil § 13

Establishment of person's domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of domicile in foreign jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

An adult may change his or her domicil at will.<sup>1</sup>

To effectuate a change in domicil, the law requires that both residency and

#### [Section 16]

<sup>1</sup>Perito v. Perito, 756 P.2d 895 (Alaska 1988).

<sup>2</sup>Ex parte Phillips, 275 Ala. 80, 152 So. 2d 144 (1963); Newman v. Newman, 558 So. 2d 821 (Miss. 1990); In re Gelarie's Estate, 75 N.Y.S.2d 594 (Sur. Ct. 1947).

As to the intention to abandon a domicil, see § 19.

<sup>3</sup>McIntosh v. Maricopa County, 73 Ariz. 366, 241 P.2d 801, 31 A.L.R.2d 770 (1952); Newman v. Newman, 558 So. 2d 821 (Miss. 1990); In re Blankford, 241 N.Y. 180, 149 N.E. 415 (1925) (holding that renunciation of one home is not sufficient as a change of domicil without the acquisition of another).

#### [Section 17]

<sup>1</sup>Bank One, Texas, N.A. v. Montle, 964

the intent<sup>2</sup> to sustain that residency coexist.<sup>3</sup> No change of domicile will result in the absence of one of these elements.<sup>4</sup> Thus, an intention to acquire a domicile without actual residence in the locality does not result in the acquisition of domicile,<sup>5</sup> nor does the fact of physical presence without an intention to acquire a domicile result in domicile.<sup>6</sup>

While a very short period of residence in a place may establish a domicile,<sup>7</sup> mere residence, regardless of how prolonged, is insufficient without an intention to make the place a permanent residence or home.<sup>8</sup> The intent need not, however, develop at the same time as the physical move to a new location. A subsequent concurrence of physical presence and an intent to adopt the locality as a domicile is sufficient.<sup>9</sup>

◆ **Observation:** Following the change of a domicile, when the new domicile is established, it persists until another is legally acquired.<sup>10</sup>

## § 18 Preliminary steps toward relocation

### Research References

West's Key Number Digest, Domicile ◊4

Acquisition of domicile by sending wife or family to new home, 31 A.L.R. 2d 775

Because one must be physically present in a place in order to acquire a domicile there,<sup>1</sup> some courts hold that preliminary steps of a move do not

F.2d 48 (1st Cir. 1992); *Perito v. Perito*, 756 P.2d 895 (Alaska 1988).

<sup>2</sup>As to intent as effecting change of domicile, generally, see §§ 19 to 23.

<sup>3</sup>*Valentin v. Hospital Bella Vista*, 254 F.3d 358 (1st Cir. 2001).

To effect a change of one's legal domicile, two things are indispensable: residence in a new domicile and the intention to remain there. *Linaros v. Fortuna*, 157 F.3d 945 (2d Cir. 1998).

For a change of domicile to occur, the fact of physical presence at a dwelling place and the intention to make it a home must concur. *Kirkpatrick v. Transtector Systems*, 114 Idaho 559, 759 P.2d 65 (1988).

<sup>4</sup>*Keating v. Keating*, 399 N.W.2d 872 (N.D. 1987).

Absence of either of: (1) residence (bodily presence) in the new locality; and (2) an intention there to remain, thwarts the change in domicile. *Huffman v. Huffman*, 232 Neb. 742, 441 N.W.2d 899 (1989).

<sup>5</sup>*Bank One, Texas, N.A. v. Montle*, 964 F.2d 48 (1st Cir. 1992); *Oakes v. Oakes*, 219 Ark. 363, 242 S.W.2d 128 (1951); *Blount v. Boston*, 351 Md. 360, 718 A.2d 1111 (1998);

*Keating v. Keating*, 399 N.W.2d 872 (N.D. 1987).

Plaintiff's domicile would not change from Florida to Connecticut as result of his formation of unimplemented intent to move to Connecticut; domicile would not change until plaintiff was also physically present in Connecticut. *Linaros v. Fortuna*, 157 F.3d 945 (2d Cir. 1998).

As to physical presence required to establish a domicile of choice, see § 14.

<sup>6</sup>*Bank One, Texas, N.A. v. Montle*, 964 F.2d 48 (1st Cir. 1992); *Oakes v. Oakes*, 219 Ark. 363, 242 S.W.2d 128 (1951); *Blount v. Boston*, 351 Md. 360, 718 A.2d 1111 (1998).

As to the intention required to establish a domicile of choice, see §§ 19 to 23.

<sup>7</sup>§ 15.

<sup>8</sup>*Blair v. Blair*, 341 Ill. App. 93, 93 N.E.2d 95 (1st Dist. 1950).

<sup>9</sup>*Ford v. Peck*, 116 Kan. 74, 225 P. 1054 (1924); *Newman v. Newman*, 558 So. 2d 821 (Miss. 1990).

<sup>10</sup>*Kirkpatrick v. Transtector Systems*, 114 Idaho 559, 759 P.2d 65 (1988).

### [Section 18]

<sup>1</sup>§ 14.

alone establish a change of domicil.<sup>2</sup> Some courts, however, have reached a contrary result.<sup>3</sup>

## 2. *Intent to Change Domicil*

### § 19 Nature of intention

#### Research References

West's Key Number Digest, Domicile Ⓒ4(2)

Nonestablishment of domicile in foreign jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

A change in domicil depends, in large part, on whether or not the person intends to make the new place a legal residence<sup>1</sup> and thereby acquire a new domicil to the exclusion of the previous domicil.<sup>2</sup> The person seeking to establish a new domicil must intend not simply to acquire the legal status of a domiciliary in the new jurisdiction but must intend to make the new place a home in fact.<sup>3</sup>

◆ **Observation:** Generally, it is the intention at the time of arrival at the new residence which is important.<sup>4</sup> The fact that one later acquires doubts about remaining in the new home or is called upon to leave it is not relevant, unless the subsequent doubt or the circumstances of leaving indicate that no intention to make a domicil in the place ever existed.<sup>5</sup>

The intent to change one's domicil must include an intention to abandon the former domicil<sup>6</sup> permanently or indefinitely.<sup>7</sup> If a person establishes a new dwelling place but retains an intention to return to the old dwelling

<sup>2</sup>Keating v. Keating, 399 N.W.2d 872 (N.D. 1987).

<sup>3</sup>Lea v. Lea, 18 N.J. 1, 112 A.2d 540 (1955) (holding that a man residing outside a state who asked his spouse to establish a home within the state established the state as the family's domicil in the absence of proof of a contrary, genuine intention).

#### [Section 19]

<sup>1</sup>Garcia v. Angulo, 335 Md. 475, 644 A.2d 498 (1994); Matter of Estate of Burshiem, 483 N.W.2d 175 (N.D. 1992).

<sup>2</sup>Kirkpatrick v. Transtector Systems, 114 Idaho 559, 759 P.2d 65 (1988).

The essential fact that raises a change of abode to a change of domicil is the absence of any intention to live elsewhere. Williamson v. Osenton, 232 U.S. 619, 34 S. Ct. 442, 58 L. Ed. 758 (1914).

<sup>3</sup>Manthey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991).

A nonresident, unwed mother's visits to Florida during an "on-and-off" relationship with her child's father were insufficient to

prove a settled intention to make Florida her permanent home, such that Florida lacked personal jurisdiction over the mother with respect to a paternity and custody proceeding brought by the father. Keveloh v. Carter, 699 So. 2d 285 (Fla. Dist. Ct. App. 5th Dist. 1997).

<sup>4</sup>Gallagher v. Philadelphia Transp. Co., 185 F.2d 543 (3d Cir. 1950); Perito v. Perito, 756 P.2d 895 (Alaska 1988).

<sup>5</sup>Gallagher v. Philadelphia Transp. Co., 185 F.2d 543 (3d Cir. 1950).

<sup>6</sup>Blount v. Boston, 351 Md. 360, 718 A.2d 1111 (1998); In re Estate of Craven, 265 Neb. 41, 654 N.W.2d 196 (2002); Keating v. Keating, 399 N.W.2d 872 (N.D. 1987); Godino v. Cleanthes, 163 Vt. 237, 656 A.2d 991 (1995).

Physical presence in a new location does not defeat the presumption of continuing domicil unless an intent to abandon a former domicil in favor of a new one is also proven. In re Orshansky, 804 A.2d 1077 (D.C. 2002).

<sup>7</sup>§ 20.

As to the abandonment of domicil, generally, see § 16



place as his or her only home, the domicile remains at the old dwelling place.<sup>8</sup> There must be both an intent to remain in the place chosen as the new domicile and an absence of an intent to return to the old domicile.<sup>9</sup>

The intention to remain in the new place must be accompanied by an act demonstrating the intention.<sup>10</sup> In addition, the intention must be objectively reasonable.<sup>11</sup>

## § 20 Intended duration of residence

### Research References

West's Key Number Digest, Domicile ⇨4(2)

When a person lives in a particular location, in the sense that he or she merely subsists there for a while, the person has not necessarily established a domicile there.<sup>1</sup> The intent necessary to establish domicile is an intent to remain in one's new place of residence, either permanently<sup>2</sup> or for an indefinite period of time.<sup>3</sup>

◆ **Observation:** The person need not intend to remain for all time, and an intention is to remain for an indefinite period suffices.<sup>4</sup>

The element of permanency should not be arbitrarily measured by any mere yardstick of time, but rather by the actor's intent as reflected by the nature and purpose of his or her conduct.<sup>5</sup>

## § 21 Conditional intention

### Research References

West's Key Number Digest, Domicile ⇨4(2)

For domicile purposes, the intention to make a new home must be unqualified and not conditioned on the happening of a future event.<sup>1</sup>

<sup>8</sup>Manthey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991); King v. Bruce, 145 Tex. 647, 201 S.W.2d 803, 171 A.L.R. 1328 (1947).

<sup>9</sup>Manthey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991).

<sup>10</sup>Butler v. Pollard, 482 F. Supp. 847 (E.D. Okla. 1979); Appleton v. Southern Trust Co., 244 Ky. 453, 51 S.W.2d 447 (1932).

<sup>11</sup>Garcia v. Angulo, 335 Md. 475, 644 A.2d 498 (1994).

#### [Section 20]

<sup>1</sup>Bolton v. Krantz, 54 Mass. App. Ct. 193, 764 N.E.2d 878 (2002).

<sup>2</sup>Livermore v. Livermore, 822 So. 2d 437 (Ala. Civ. App. 2001); Medlantic Long Term Care Corp. v. Smith ex rel. Estate of Ferguson, 791 A.2d 25 (D.C. 2002); Peters v.

Haley, 762 So. 2d 695 (La. Ct. App. 1st Cir. 2000), writ denied, 766 So. 2d 547 (La. 2000).

As to the effect of a "floating intention" to return to a former domicile, see § 22.

<sup>3</sup>Valentin v. Hospital Bella Vista, 254 F.3d 358 (1st Cir. 2001); Livermore v. Livermore, 822 So. 2d 437 (Ala. Civ. App. 2001); In re Estate of Derricotte, 744 A.2d 535 (D.C. 2000).

To acquire a domicile of choice in a place, a person must intend to make that place his home for the time at least. Restatement Second, Conflict of Laws § 18.

<sup>4</sup>Perito v. Perito, 756 P.2d 895 (Alaska 1988); Manthey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991).

<sup>5</sup>Hughes v. Luckner, 233 Minn. 207, 46 N.W.2d 497 (1951).

#### [Section 21]

<sup>1</sup>Jones v. State ex rel. McFarland, 207

◆ **Observation:** If one leaves to seek employment and intends to change his or her residence only after finding employment, there is no loss of domicil.<sup>2</sup> Moreover, employment at a particular place does not bring about a change of domicil, if the intention to remain at that place is contingent upon the permanency of the employment.<sup>3</sup>

## § 22 “Floating” intention

### Research References

West's Key Number Digest, Domicile ⇨4(2)

The intention to return at some indefinite, future time to a former place of abode, commonly called a “floating intention,” does not destroy present domicil.<sup>1</sup> If a person has actually moved to a new abode, with the intention of remaining there for an indefinite time and establishing it as a place of fixed present domicil, that place is to be deemed the person's domicil, notwithstanding he or she may entertain a floating intention to return to his or her former domicil at some future time.<sup>2</sup>

## § 23 Effect of motive

### Research References

West's Key Number Digest, Domicile ⇨4(2)

Nonestablishment of domicil in foreign jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

Given an intention to change domicil, the motive of the person purporting to change his or her domicil is immaterial.<sup>1</sup> Thus, a change of residence motivated by self-interest does not prevent a change of domicil.<sup>2</sup> In particular, a change in domicil is not affected by the fact that the change is designed to—

— defeat the exercise of federal diversity jurisdiction<sup>3</sup> or create diver-

Miss. 208, 42 So. 2d 123 (1949); *Lipman v. Rutgers-State University of New Jersey*, 329 N.J. Super. 433, 748 A.2d 142, 143 Ed. Law Rep. 288 (App. Div. 2000).

<sup>2</sup>*Manthey v. Commissioner of Revenue*, 468 N.W.2d 548 (Minn. 1991).

<sup>3</sup>*Com. ex rel. McCormack v. McCormack*, 164 Pa. Super. 553, 67 A.2d 603 (1949).

As to the weight of evidence of the location of a business or occupation, see § 66.

#### [Section 22]

<sup>1</sup>*Gates v. C.I.R.*, 199 F.2d 291 (10th Cir. 1952); *Penn Mut. Life Ins. Co. v. Fields*, 81 F. Supp. 54 (S.D. Cal. 1948); *Hiatt v. Lee*, 48 Ariz. 320, 61 P.2d 401, 107 A.L.R. 444 (1936); *Shenton v. Abbott*, 178 Md. 526, 15 A.2d 906 (1940); *Redrow v. Redrow*, 94 Ohio App. 38, 51

Ohio Op. 266, 114 N.E.2d 293 (1st Dist. Clermont County 1952); *Gardner v. Gardner*, 118 Utah 496, 222 P.2d 1055 (1950).

<sup>2</sup>*Oglesby v. Williams*, 372 Md. 360, 812 A.2d 1061 (2002).

#### [Section 23]

<sup>1</sup>*Bank One, Texas, N.A. v. Montle*, 964 F.2d 48 (1st Cir. 1992).

<sup>2</sup>*In re Woodward's Estate*, 123 N.Y.S.2d 765 (Sur. Ct. 1953), order aff'd, 283 A.D. 846, 128 N.Y.S.2d 587 (4th Dep't 1954) (recognizing that people generally change domicil in the belief that doing so will be advantageous to them somehow).

<sup>3</sup>*Bank One, Texas, N.A. v. Montle*, 964 F.2d 48 (1st Cir. 1992).

- sity jurisdiction.<sup>4</sup>
- secure lower taxes.<sup>5</sup>
- take advantage of less stringent divorce laws.<sup>6</sup>
- have one's will proved and estate settled in one county rather than another.<sup>7</sup>
- carry on an adulterous relationship.<sup>8</sup>
- take advantage of in-state tuition rates.<sup>9</sup>

### 3. *Removal and Absence as Change of Domicil*

## § 24 Generally

### Research References

West's Key Number Digest, Domicile ⇨4(1)

A person's domicile in a state does not depend on a continuous presence in the state and is not dissolved by a mere absence from the state.<sup>1</sup> One does not lose one's domicile by mere physical presence elsewhere, unless that presence is accompanied by an intention to abandon the old residence and adopt the new.<sup>2</sup>

♦ **Caution:** If intended as a permanent abandonment, the shortest absence can be an abandonment of domicile, even if the person promptly changes his or her intention.<sup>3</sup>

## § 25 Temporary absence

### Research References

West's Key Number Digest, Domicile ⇨4(1)

Nature and location of one's business or calling as element in determining domicile in divorce cases, 36 A.L.R. 2d 756

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

A person does not abandon his or her established domicile by leaving it for a

<sup>4</sup>Williamson v. Osenton, 232 U.S. 619, 34 S. Ct. 442, 58 L. Ed. 758 (1914).

<sup>5</sup>Wicker v. Wicker, 223 Ark. 879, 269 S.W.2d 311 (1954); Slater v. Munroe, 313 Mass. 538, 48 N.E.2d 149 (1943); State ex rel. Orr v. Buder, 308 Mo. 237, 271 S.W. 508, 39 A.L.R. 1199 (1925); DeBlois v. Clark, 764 A.2d 727 (R.I. 2001).

<sup>6</sup>Wicker v. Wicker, 223 Ark. 879, 269 S.W.2d 311 (1954).

<sup>7</sup>In re Newcomb's Estate, 192 N.Y. 238, 84 N.E. 950 (1908).

<sup>8</sup>Gasper v. Wales, 223 A.D. 89, 227 N.Y.S. 421 (1st Dep't 1928).

<sup>9</sup>Eastman v. University of Michigan, 30 F.3d 670, 93 Ed. Law Rep. 121, 1994 FED App. 0259P (6th Cir. 1994).

### [Section 24]

<sup>1</sup>Manthey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991); O'Rourke v. Utah State Tax Com'n, 830 P.2d 230 (Utah 1992).

As to domicile as affected by residence in a foreign country, see § 51.

<sup>2</sup>In re Marriage of Anderson, 25 Kan. App. 2d 754, 969 P.2d 913 (1998).

Removal from one's domiciliary jurisdiction without the intent to change one's domicile is insufficient. Weiler v. Weiler, 861 So. 2d 472 (Fla. Dist. Ct. App. 5th Dist. 2003).

<sup>3</sup>Schoof's Estate v. Schoof, 193 Kan. 611, 396 P.2d 329 (1964); Gardner v. Gardner, 118 Utah 496, 222 P.2d 1055 (1950).

period, if he or she genuinely intends to return and not to acquire a domicile elsewhere.<sup>1</sup> If domicile has once existed, mere temporary absence will not destroy it, however long it continued.<sup>2</sup> Thus, a temporary relocation away from one's established domicile does not result in a change of domicile without proof of intent to establish domicile elsewhere.<sup>3</sup>

## § 26 Removal for health reasons

### Research References

West's Key Number Digest, Domicile ⇨4(1)

A change of residence in order to benefit one's health does not usually change one's domicile.<sup>1</sup> Such a change is less than a change of domicile, even though the actual time spent in the new residence may be long<sup>2</sup> and even though the person is aware that his or her illness will prevent a return to the domicile.<sup>3</sup>

## IV. DOMICIL OF PARTICULAR TYPES OF PERSONS; PERSONS IN PARTICULAR PLACES OR CIRCUMSTANCES

### A. PARTICULAR TYPES OF PERSONS

#### Research References

##### *Text References*

Restatement Second, Conflict of Laws §§ 17, 21, 22

##### *West's Digest References*

Domicile ⇨1, 7.1

#### [Section 25]

<sup>1</sup>Lau Ow Bew v. U.S., 144 U.S. 47, 12 S. Ct. 517, 36 L. Ed. 340 (1892); Stadtmuller v. Miller, 11 F.2d 732, 45 A.L.R. 895 (C.C.A. 2d Cir. 1926); Hughes v. Illinois Public Aid Commission, 2 Ill. 2d 374, 118 N.E.2d 14, 43 A.L.R.2d 1421 (1954); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Klindt v. Klindt, 888 S.W.2d 424 (Mo. Ct. App. W.D. 1994).

<sup>2</sup>State ex rel. Sandy v. Johnson, 212 W. Va. 343, 571 S.E.2d 333 (2002).

<sup>3</sup>Jones v. Brown, 799 So. 2d 1278 (La. Ct. App. 2d Cir. 2001).

A temporary removal or absence from one domicile with an intent to return there will not suffice to establish a new domicile. Kemper v. Kemper, 807 So. 2d 711 (Fla. Dist. Ct. App. 5th Dist. 2002).

If a person temporarily leaves a legal domicile or leaves for a particular purpose, and

does not take up a permanent residence somewhere else, then that person's legal domicile has not changed. Williams v. Clark County Dist. Attorney, 118 Nev. 473, 50 P.3d 536 (2002), as corrected, (July 26, 2002).

#### [Section 26]

<sup>1</sup>Oakes v. Oakes, 219 Ark. 363, 242 S.W.2d 128 (1951); Shenton v. Abbott, 178 Md. 526, 15 A.2d 906 (1940); In re Ingersol's Estate, 128 Mont. 230, 272 P.2d 1003 (1954).

Residence in a nursing home in another parish is not alone sufficient to change domicile. Fuqua v. Fuqua, 311 So. 2d 568 (La. Ct. App. 3d Cir. 1975).

<sup>2</sup>Hiatt v. Lee, 48 Ariz. 320, 61 P.2d 401, 107 A.L.R. 444 (1936); Oakes v. Oakes, 219 Ark. 363, 242 S.W.2d 128 (1951); In re Meyers' Estate, 137 Neb. 60, 288 N.W. 35 (1939).

<sup>3</sup>Shenton v. Abbott, 178 Md. 526, 15 A.2d 906 (1940).

*Annotation References*

A.L.R. Digest: Domicile §§ 6 to 10

A.L.R. Index: Domicile and Residence

*Forms References*

Am. Jur. Pleading and Practice Forms, Domicil §§ 11, 12

*Trial Strategy References*

Establishment of person's domicile, 39 Am. Jur. Proof of Facts 2d 587

Child custody litigation, 22 Am. Jur. Trials 347

Incompetency and commitment proceedings, 8 Am. Jur. Trials 483

*1. In General***§ 27 Persons in transit****Research References**

West's Key Number Digest, Domicile Ⓒ1

Since a domicile, once established, continues until a new one is acquired by concurrent intent and physical presence,<sup>1</sup> a person who is in transit to a new domicile retains his or her old domicile until the new one is reached.<sup>2</sup> This rule applies to changes from one country to another,<sup>3</sup> from one state to another,<sup>4</sup> and from one county or town to another county or town in the same state.<sup>5</sup>

However, there is also contrary authority.<sup>6</sup>

**§ 28 Soldiers and other military personnel****Research References**

West's Key Number Digest, Domicile Ⓒ1

Validity and construction of statutory provision relating to jurisdiction of court for purpose of divorce for servicemen, 73 A.L.R. 3d 431

Service of process on person in military service by serving person at civilian abode or residence, or leaving copy there, 46 A.L.R. 2d 1239

Residence or domicile for purpose of divorce action, of one in armed forces, 21 A.L.R. 2d 1163

Complaint, petition, or declaration—Allegation—Domicile of military person. Am. Jur. Pleading and Practice Forms, Domicil § 12

Establishment of person's domicile, 39 Am. Jur. Proof of Facts 2d 587

**[Section 27]**

<sup>1</sup>§ 17.

<sup>2</sup>Hovland v. Farmers' State Bank of Christine, N.D., 10 F.2d 478 (C.C.A. 8th Cir. 1926); Snyder v. Boulware, 109 Mont. 427, 96 P.2d 913 (1939).

<sup>3</sup>In re Armstrong's Estate, 167 Misc. 592, 4 N.Y.S.2d 413 (Sur. Ct. 1938).

<sup>4</sup>Sampsell v. Superior Court in and for Los Angeles County, 32 Cal. 2d 763, 197 P.2d 739 (1948) (disapproved of on other grounds by, Robinson v. Superior Court in and for Los Angeles County, 35 Cal. 2d 379, 218 P.2d 10 (1950)).

<sup>5</sup>Keating v. Keating, 399 N.W.2d 872 (N.D. 1987).

<sup>6</sup>In re Estate of Galada, 1999 SD 21, 589 N.W.2d 221 (S.D. 1999) (a former wife intended to make South Dakota the permanent home of her and her children, and thus, a child was domiciled in South Dakota at the time of her death, where: (1) the wife had been awarded legal custody of the child in the divorce; (2) the wife and children had vacated their home in Maryland and were en route to a new home in South Dakota at the time of the child's death; and (3) the wife had all of the family's belongings shipped to South Dakota and had obtained employment and a place to live there).

Generally, an adult does not gain or lose a domicile or residence by serving in the military.<sup>1</sup> Thus, unless the intention is to change domicile, a person does not acquire a new domicile by entering the military and does not abandon or lose the domicile that he or she had upon entering.<sup>2</sup> Moreover, an original posting to a location does not sever the soldier's previous domiciliary status.<sup>3</sup> However, military personnel may acquire a new domicile where stationed,<sup>4</sup> if the circumstances show an intent to abandon the original domicile and adopt the new one.<sup>5</sup> Like a civilian, a soldier can acquire a new domicile by the concurrent elements of physical presence and the intent to become domiciled at the place of military service.<sup>6</sup>

◆ **Caution:** Contrary authority has held that a person in the armed forces cannot acquire a domicile of choice by being present under the legal compulsion of military orders, because such a presence does not signify the person's intent to acquire a new domicile.<sup>7</sup>

If a soldier buys off-base housing does not, in itself, prove the required intent to acquire a domicile.<sup>8</sup> Matters properly taken into consideration in determining whether a soldier stationed within a state has established a residence include whether he or she:

- established actual living quarters there
- brought any family there
- accumulated any of the indicia of some degree of permanency, such as bank accounts, telephone listings, charge accounts, and the like

#### [Section 28]

<sup>1</sup>Consford v. Consford, 271 A.D.2d 106, 711 N.Y.S.2d 199 (3d Dep't 2000).

As to jurisdiction in divorce suits involving persons in military or naval service, see Am. Jur. 2d, Divorce and Separation §§ 215 to 217.

<sup>2</sup>Nora v. Nora, 494 So. 2d 16 (Ala. 1986); Kendrick v. Parker, 258 Ga. 210, 367 S.E.2d 544 (1988); Howard v. Howard, 499 So. 2d 222 (La. Ct. App. 2d Cir. 1986); Wamsley v. Wamsley, 333 Md. 454, 635 A.2d 1322 (1994); Newman v. Newman, 558 So. 2d 821 (Miss. 1990); Israel v. Israel, 255 N.C. 391, 121 S.E.2d 713 (1961); Wiseman v. Wiseman, 216 Tenn. 702, 393 S.W.2d 892 (1965).

<sup>3</sup>Hilburn v. Hilburn, 287 Ark. 50, 696 S.W.2d 718 (1985); St. John v. St. John, 291 Ky. 363, 163 S.W.2d 820 (1942).

A soldier does not acquire a new domicile merely by being stationed at a particular place in the line of duty; rather, a soldier's domicile remains the same as when he or she entered the service, unless proof of clear and unequivocal intention to change domicile is shown. *Torrington Co. v. Stutzman*, 46 S.W.3d 829 (Tex. 2000).

<sup>4</sup>*Ellis v. Southeast Const. Co.*, 260 F.2d 280 (8th Cir. 1958); *Kendrick v. Parker*, 258 Ga. 210, 367 S.E.2d 544 (1988).

<sup>5</sup>*Ellis v. Southeast Const. Co.*, 260 F.2d 280 (8th Cir. 1958); *Kendrick v. Parker*, 258 Ga. 210, 367 S.E.2d 544 (1988); *Peters v. Haley*, 762 So. 2d 695 (La. Ct. App. 1st Cir. 2000), writ denied, 766 So. 2d 547 (La. 2000); *Petition of Pippy*, 711 A.2d 1048 (Pa. Commw. Ct. 1998), aff'd, 551 Pa. 210, 709 A.2d 905 (1998).

<sup>6</sup>*Allen v. Allen*, 52 N.M. 174, 194 P.2d 270 (1948); *Israel v. Israel*, 255 N.C. 391, 121 S.E.2d 713 (1961).

A member of the military may abandon his or her former domicile and establish a new domicile by meeting the same statutory requirements that apply to any other citizen. *Midkiff v. Midkiff*, 275 Ga. 136, 562 S.E.2d 177 (2002).

As to the concurrent elements of presence and intent, generally, see § 17.

<sup>7</sup>*Newman v. Newman*, 558 So. 2d 821 (Miss. 1990).

<sup>8</sup>*In re Marriage of Thornton*, 135 Cal. App. 3d 500, 185 Cal. Rptr. 388 (5th Dist. 1982).

- retained a permanent abode elsewhere or claimed a residence elsewhere<sup>9</sup>

## § 29 Inmates; probationers

### Research References

West's Key Number Digest, Domicile ☞ 1

Since the location of domicile is voluntary, a forcible change in one's state of residence does not affect one's domicile.<sup>1</sup> Thus, a prisoner's domicile ordinarily remains what it was before his or her imprisonment and does not change to the location of his or her confinement.<sup>2</sup>

However, the presumption that an inmate retains the domicile possessed at the time of entry into the institution is rebuttable,<sup>3</sup> and an inmate is capable of electing to make the place of incarceration his or her new domicile.<sup>4</sup> By seeking release in a particular state different from the state of his or her initial incarceration and by persuading the authorities to transfer him or her there, a prisoner would manifest both physical presence and an intent to remain in the new domiciliary state when released.<sup>5</sup> Moreover, the degree of attachment between the inmate and the institution may give rise to resident status by operation of law, particularly if there are no other forums with a similar degree of interest.<sup>6</sup>

A person placed on probation following the conviction of a crime has the ability to acquire a new residence.<sup>7</sup>

## § 30 Exiles and fugitives

### Research References

West's Key Number Digest, Domicile ☞ 1

<sup>9</sup>Teague v. District Court of Third Judicial Dist. In and For Salt Lake County, 4 Utah 2d 147, 289 P.2d 331, 53 A.L.R.2d 1159 (1955).

#### [Section 29]

<sup>1</sup>Sullivan v. Freeman, 944 F.2d 334 (7th Cir. 1991).

A person does not usually acquire a domicile of choice by his presence in a place under physical or legal compulsion. Restatement Second, Conflict of Laws § 17.

<sup>2</sup>Stifel v. Hopkins, 477 F.2d 1116, 23 A.L.R. Fed. 595 (6th Cir. 1973); Sullivan v. Freeman, 944 F.2d 334 (7th Cir. 1991); Shaffer v. Tepper, 127 F. Supp. 892 (E.D. Ky. 1955); Bull v. Kistner, 257 Iowa 968, 135 N.W.2d 545 (1965); In re Joseph, 87 S.W.3d 513 (Tenn. Ct. App. 2002), appeal denied, recommended for publication, (Sept. 30, 2002) and appeal denied, recommended for publication, (Oct. 7, 2002); Owens v. Stovall, 64 S.W.2d 360 (Tex. Civ. App. Waco 1933), writ refused.

Given that a person's domicile reflects his or her choice of abode, when an individual is imprisoned and loses the power to decide where he or she shall live, the individual does not lose his or her former domicile as a result of the involuntary incarceration. Bolton v. Krantz, 54 Mass. App. Ct. 193, 764 N.E.2d 878 (2002).

<sup>3</sup>Sullivan v. Freeman, 944 F.2d 334 (7th Cir. 1991).

<sup>4</sup>Bolton v. Krantz, 54 Mass. App. Ct. 193, 764 N.E.2d 878 (2002).

<sup>5</sup>Sullivan v. Freeman, 944 F.2d 334 (7th Cir. 1991).

<sup>6</sup>District of Columbia v. H. J. B., 359 A.2d 285 (D.C. 1976).

As to operation of law, see § 7.

<sup>7</sup>Marathon County v. Milwaukee County, 273 Wis. 541, 79 N.W.2d 233 (1956).

Since a change of domicile must be voluntary and free from compulsion or restraint, refugees and asylum seekers do not necessarily act with the voluntariness needed to establish domicile.<sup>1</sup> However, such persons retain the ability to demonstrate voluntary intent and may acquire a new domicile in the place where they have sought refuge.<sup>2</sup>

A fugitive from justice may establish domicile in the jurisdiction where he or she is hiding.<sup>3</sup>

## § 31 Government employees

### Research References

West's Key Number Digest, Domicile ⇐1

Nature and location of one's business or calling as element in determining domicile in divorce cases, 36 A.L.R. 2d 756

A change of residence occasioned by the duties of public office or civil service employment does not cause a change of domicile, in the absence of a concurrent intention to abandon the old domicile and acquire a new one.<sup>1</sup> That is, one who resides at a place in order to fulfill public duties does not, by that fact alone, acquire a new domicile or lose the domicile that he or she had before undertaking such duties.<sup>2</sup> No distinction is made in this respect between elected and appointed officers.<sup>3</sup> Thus, ambassadors, ministers, and consular officers generally do not gain or lose a domicile by their employment or duties.<sup>4</sup> The rule also applies to federal officeholders and employees in the District of Columbia.<sup>5</sup>

Whether a public officer or employee has changed his or her domicile must be determined from all the circumstances indicative of intent and in accordance with the general principles of the law of domicile.<sup>6</sup> The nature of the

#### [Section 30]

<sup>1</sup>McGrath v. Kristensen, 340 U.S. 162, 71 S. Ct. 224, 95 L. Ed. 173 (1950).

<sup>2</sup>Perez v. Perez, 164 So. 2d 561 (Fla. Dist. Ct. App. 3d Dist. 1964).

<sup>3</sup>Garcia v. Angulo, 335 Md. 475, 644 A.2d 498 (1994).

As to the effect of motive, see § 23.

#### [Section 31]

<sup>1</sup>Richardson v. Richardson, 258 Ala. 423, 63 So. 2d 364 (1953).

<sup>2</sup>Sweeney v. District of Columbia, 113 F.2d 25, 129 A.L.R. 1370 (App. D.C. 1940); Mitchell v. Delaware State Tax Com'r, 42 Del. 589, 42 A.2d 19 (Super. Ct. 1945).

<sup>3</sup>Gallagher v. Board of Sup'rs of Elections, 219 Md. 192, 148 A.2d 390 (1959).

<sup>4</sup>Raymond v. Leishman, 243 Pa. 64, 89 A. 791 (1914).

<sup>5</sup>Rhodes v. Rhodes, 80 Cal. App. 2d 723, 182 P.2d 275 (2d Dist. 1947); Lea v. Lea, 28 N.J. Super. 290, 100 A.2d 545 (Ch. Div. 1953), judgment aff'd in part, rev'd in part on other grounds, 32 N.J. Super. 333, 108 A.2d 303 (App. Div. 1954), judgment aff'd, 18 N.J. 1, 112 A.2d 540 (1955).

In order to retain his former domicile, one who comes to the District of Columbia to enter government service must always have a fixed and definite intent to return to his former place of abode when separated from the service. A mere sentimental attachment to his former place of domicile or readiness to go back where one came from or to any other community offering advantages upon the termination of service is not enough. District of Columbia v. Murphy, 314 U.S. 441, 62 S. Ct. 303, 86 L. Ed. 329 (1941).

<sup>6</sup>District of Columbia v. Murphy, 314 U.S. 441, 62 S. Ct. 303, 86 L. Ed. 329 (1941).



particular office or employment is a significant,<sup>7</sup> but not conclusive,<sup>8</sup> factor.

## § 32 Students

### Research References

West's Key Number Digest, Domicile ⇐1

Residence of students for voting purposes, 44 A.L.R. 3d 797

In general, a student who attends a school with the intention of remaining there only as a student and until the course of education is completed does not acquire a domicile there.<sup>1</sup> The rule applies to both adults and minors.<sup>2</sup>

An adult student or an emancipated minor may acquire a domicile at the place where his or her school is situated, if the student intends to make the place a permanent home and has no intention of resuming the former domicile.<sup>3</sup>

## § 33 Teachers

### Research References

West's Key Number Digest, Domicile ⇐1

Residence of students for voting purposes, 44 A.L.R. 3d 797

A teacher may acquire domicile in the town where he or she teaches, even if the intention to make the place a home is subject to the possibility that the teacher may later find a better position elsewhere or fail to retain his or her employment in that town.<sup>1</sup> However, a teacher does not change his or her domicile so long as he or she retains the domicile of origin.<sup>2</sup>

## § 34 Clergy

### Research References

West's Key Number Digest, Domicile ⇐1

The mere contingency that members of the clergy may be reassigned to new duties or parishes does not prevent the acquisition of domicile in the

<sup>7</sup>District of Columbia v. Murphy, 314 U.S. 441, 62 S. Ct. 303, 86 L. Ed. 329 (1941).

<sup>8</sup>Mitchell v. Delaware State Tax Com'r, 42 Del. 589, 42 A.2d 19 (Super. Ct. 1945).

#### [Section 32]

<sup>1</sup>Eastman v. University of Michigan, 30 F.3d 670, 93 Ed. Law Rep. 121, 1994 FED App. 0259P (6th Cir. 1994); Baker v. Varser, 240 N.C. 260, 82 S.E.2d 90 (1954); Fiske v. Fiske, 48 Wash. 2d 69, 290 P.2d 725 (1955).

Plaintiff, as a student in another state, did not abandon his New York residence. Ledwith v. Sears Roebuck and Co., Inc., 231 A.D.2d 17, 660 N.Y.S.2d 402 (1st Dep't 1997).

As to the residence of students for voting purposes, see Am. Jur. 2d, Elections § 168.

<sup>2</sup>In re Hall's Guardianship, 235 N.C. 697, 71 S.E.2d 140, 32 A.L.R.2d 856 (1952).

<sup>3</sup>Hughes v. Lucker, 233 Minn. 207, 46 N.W.2d 497 (1951); Baker v. Varser, 240 N.C. 260, 82 S.E.2d 90 (1954); Roof v. Tiller, 195 S.C. 132, 10 S.E.2d 333, 132 A.L.R. 500 (1940).

#### [Section 33]

<sup>1</sup>Dodd v. Lorenz, 210 Iowa 513, 231 N.W. 422 (1930) (where the teacher's contract for teaching was limited to a school term of nine months only); Klutts v. Jones, 21 N.M. 720, 158 P. 490 (1916).

<sup>2</sup>Everman v. Thomas, 303 Ky. 156, 197 S.W.2d 58 (1946).

places to which they are assigned.<sup>1</sup>

## § 35 Persons engaged in itinerant occupations

### Research References

West's Key Number Digest, Domicile ⇨1

Nature and location of one's business or calling as element in determining domicile in divorce cases, 36 A.L.R. 2d 756

Typically, the domicile of one engaged in an occupation or trade that requires nearly constant travel is the domicile of choice at the time of entry into the occupation or trade.<sup>1</sup> Despite absences for business purposes, the domicile is presumed to continue until a new domicile is established by concurrent physical presence and an intention to remain in a new location.<sup>2</sup>

## § 36 Married persons

### Research References

West's Key Number Digest, Domicile ⇨1

Complaint, petition, or declaration—Allegation—Domicile of spouse for divorce purposes. Am. Jur. Pleading and Practice Forms, Domicil § 11

A man and wife are presumed to have the same domicile, and this presumption flows in favor of both parties.<sup>1</sup> However, the common-law rule that a married woman lost her own domicile and acquired her husband's domicile by operation of law<sup>2</sup> has been abandoned.<sup>3</sup> The rules for the acquisition of a domicile of choice are the same for both married and unmarried persons.<sup>4</sup>

One spouse's domicile is not determinative of the other spouse's domicile, and each spouse may establish his or her domicile as he or she chooses.<sup>5</sup> Separate domiciles may be established by agreement or by any other justifiable

#### [Section 34]

<sup>1</sup>Klutts v. Jones, 21 N.M. 720, 158 P. 490 (1916).

#### [Section 35]

<sup>1</sup>Bradshaw v. Bradshaw, 166 S.W.2d 805 (Mo. Ct. App. 1942); Snyder v. Snyder, 279 S.W. 897 (Tex. Civ. App. San Antonio 1926).

<sup>2</sup>Aetna Cas. and Sur. Co. v. Williams, 623 So. 2d 1005 (Miss. 1993).

A person who is absent due to work in the merchant marine should be considered a resident of the county and state to which he returns and intends to return when his calling permits. Dahl v. Dahl, 253 S.W.2d 691 (Tex. Civ. App. Beaumont 1952).

A change in residence for convenience in working conditions does not work a change in domicile. State v. Stalnaker, 186 W. Va. 233, 412 S.E.2d 231 (1991).

As to the presumption of the continuation of domicile, see § 55.

As to the concurrent elements of presence and intent, see § 17.

#### [Section 36]

<sup>1</sup>McClendon v. Bel, 797 So. 2d 700 (La. Ct. App. 1st Cir. 2000).

<sup>2</sup>Payne v. C. of I. R., 141 F.2d 398 (C.C.A. 5th Cir. 1944); Stafford v. State, 33 Ala. App. 163, 31 So. 2d 146 (1947); Carlson v. Carlson, 75 Ariz. 308, 256 P.2d 249 (1953).

As to domicile by operation of law, see § 7.

<sup>3</sup>Spindel v. Spindel, 283 F. Supp. 797 (E.D. N.Y. 1968); Mims v. Mims, 635 A.2d 320 (D.C. 1993); Psaty v. Psaty, 93 Misc. 2d 454, 402 N.Y.S.2d 779 (Sup 1978).

A married woman can have a legal domicile separate from that of her husband for purposes of federal diversity jurisdiction. Napletana v. Hillsdale College, 385 F.2d 871 (6th Cir. 1967).

<sup>4</sup>Restatement Second, Conflict of Laws § 21 (1988 Revision).

<sup>5</sup>Blount v. Boston, 351 Md. 360, 718 A.2d 1111 (1998).

reason that leads the couple to live apart.<sup>6</sup>

♦ **Caution:** That the couple remains married may, however, tend to disprove the asserted domicil.<sup>7</sup>

## 2. *Infants*

### § 37 Generally

#### Research References

West's Key Number Digest, Domicile ☞1, 7.1

Separate domicil of mother as affecting domicil or residence of infant, 13 A.L.R. 2d 306

Jurisdiction to award custody of child having legal domicil in another state, 4 A.L.R. 2d 7

Generally, an infant cannot unilaterally acquire, change, or determine his or her domicil.<sup>1</sup> A minor's domicil is the same as that of his or her parents.<sup>2</sup>

♦ **Observation:** If the parents have separate domiciles, the child usually takes the domicil of the parent with whom the child lives.<sup>3</sup>

Whenever the parental domicil changes, the minor's domicil necessarily follows it.<sup>4</sup> Furthermore, just as temporary absences do not affect the domicil of an adult,<sup>5</sup> a child does not lose his or her domicil by being sent on a visit by the parents.<sup>6</sup>

### § 38 After divorce or judicial separation

#### Research References

West's Key Number Digest, Domicile ☞1

Change of domicil as affecting character of property previously acquired as separate or community property, 14 A.L.R. 3d 404

Separate domicil of mother as affecting domicil or residence of infant, 13 A.L.R. 2d 306

<sup>6</sup>Matter of Adoption of T.R.M., 525 N.E.2d 298 (Ind. 1988).

<sup>7</sup>Manthey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991); O'Rourke v. Utah State Tax Com'n, 830 P.2d 230 (Utah 1992).

#### [Section 37]

<sup>1</sup>Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Mills v. Howard, 228 S.W.2d 906 (Tex. Civ. App. Amarillo 1950); In re Moore's Estate, 68 Wash. 2d 792, 415 P.2d 653 (1966).

A minor can acquire a domicil of his or her own in limited circumstances, and may acquire a domicil of choice only if he or she is emancipated. Palagi v. Palagi, 10 Neb. App. 231, 627 N.W.2d 765 (2001).

<sup>2</sup>Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L.

Ed. 2d 29 (1989); Rosario v. I.N.S., 962 F.2d 220 (2d Cir. 1992); Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 752 A.2d 793, 144 Ed. Law Rep. 1007 (App. Div. 2000), aff'd, 167 N.J. 55, 768 A.2d 779, 153 Ed. Law Rep. 296 (2001).

A minor has the same domicil as the parent with whom he lives. Restatement Second, Conflict of Laws § 22(1).

<sup>3</sup>Oxley v. Oxley, 159 F.2d 10 (App. D.C. 1946); Boardman v. Boardman, 135 Conn. 124, 62 A.2d 521, 13 A.L.R.2d 295 (1948); Mims v. Mims, 635 A.2d 320 (D.C. 1993); Thompson v. Mississippi Farm Bureau Mut. Ins. Co., 602 So. 2d 855 (Miss. 1992).

<sup>4</sup>Thompson v. Mississippi Farm Bureau Mut. Ins. Co., 602 So. 2d 855 (Miss. 1992).

<sup>5</sup>§ 25.

<sup>6</sup>Wear v. Wear, 130 Kan. 205, 285 P. 606, 72 A.L.R. 425 (1930).

Complaint, petition, or declaration—Allegation—Domicile of spouse for divorce purposes. *Am. Jur. Pleading and Practice Forms, Domicil* § 11  
*Child Custody Litigation*, 22 *Am. Jur. Trials* 347

If a judicial determination as to the custody of the child does not accompany a divorce or judicial separation of the parents,<sup>1</sup> the domicile of the child is that of the parent with whom the child lives.<sup>2</sup> Under such circumstances, a child who lives with the mother has the mother's domicile,<sup>3</sup> while a child who lives with the father has the father's domicile.<sup>4</sup>

If a divorce or separation proceeding determines custody of the child, the child's domicile is that of the parent having custody.<sup>5</sup> This is true regardless of whether the child lives with the legal custodial parent,<sup>6</sup> that is, the domicile of an infant in the custody of a divorced mother follows that of the mother, even if the infant does not actually live with her.<sup>7</sup> The same rule applies to custodial fathers.<sup>8</sup>

♦ **Observation:** Although a child in joint custody may simultaneously be a resident of both parents' homes,<sup>9</sup> to hold that the child may be domiciled in both parents' homes would conflict with the general proposition that a person may have only one domicile.<sup>10</sup>

According to some authority, the domicile of an infant does not follow that of the child's parent, if that parent's physical custody of the child involves a violation of a decree, order, or agreement respecting the custody or location of the infant.<sup>11</sup> Some cases, however, have reached a contrary conclusion.<sup>12</sup>

#### [Section 38]

<sup>1</sup>*Lyons v. Egan*, 110 Colo. 227, 132 P.2d 794 (1942); *Mims v. Mims*, 635 A.2d 320 (D.C. 1993); *Clemens v. Kinsley*, 72 Idaho 251, 239 P.2d 266 (1951); *Goldsmith v. Salkey*, 115 S.W.2d 778 (Tex. Civ. App. San Antonio 1937), writ refused.

<sup>2</sup>*Lyons v. Egan*, 110 Colo. 227, 132 P.2d 794 (1942); *Mims v. Mims*, 635 A.2d 320 (D.C. 1993); *Clemens v. Kinsley*, 72 Idaho 251, 239 P.2d 266 (1951); *Somerville Bd. of Educ. v. Manville Bd. of Educ.*, 332 N.J. Super. 6, 752 A.2d 793, 144 Ed. Law Rep. 1007 (App. Div. 2000), *aff'd*, 167 N.J. 55, 768 A.2d 779, 153 Ed. Law Rep. 296 (2001); *Goldsmith v. Salkey*, 115 S.W.2d 778 (Tex. Civ. App. San Antonio 1937), writ refused.

<sup>3</sup>*Clemens v. Kinsley*, 72 Idaho 251, 239 P.2d 266 (1951); *Thompson v. Mississippi Farm Bureau Mut. Ins. Co.*, 602 So. 2d 855 (Miss. 1992).

<sup>4</sup>*Matter of Adoption of T.R.M.*, 525 N.E.2d 298 (Ind. 1988).

<sup>5</sup>*McMillin v. McMillin*, 114 Colo. 247, 158 P.2d 444, 160 A.L.R. 396 (1945); *George H. and Irene L. Walker Home for Children, Inc. v. Town of Franklin*, 416 Mass. 291, 621

N.E.2d 376, 86 Ed. Law Rep. 345 (1993); *Thompson v. Mississippi Farm Bureau Mut. Ins. Co.*, 602 So. 2d 855 (Miss. 1992); *Palagi v. Palagi*, 10 Neb. App. 231, 627 N.W.2d 765 (2001); *Com. ex rel. Teitelbaum v. Teitelbaum*, 160 Pa. Super. 286, 50 A.2d 713 (1947).

Following a divorce, domicile of an infant follows the parent who has custody of the infant. *In re Olear*, 187 Misc. 2d 706, 724 N.Y. S.2d 283 (Sur. Ct. 2001).

<sup>6</sup>*In re Estate of Galada*, 1999 SD 21, 589 N.W.2d 221 (S.D. 1999).

<sup>7</sup>*Simonds v. Simonds*, 154 F.2d 326, 13 A.L.R.2d 1138 (App. D.C. 1946).

<sup>8</sup>*Evans v. Evans*, 136 Colo. 6, 314 P.2d 291 (1957); *Chamblee v. Rose*, 249 S.W.2d 775 (Ky. 1952); *MacWhinney v. MacWhinney*, 248 Minn. 303, 79 N.W.2d 683 (1956).

<sup>9</sup>*Aetna Cas. and Sur. Co. v. Williams*, 623 So. 2d 1005 (Miss. 1993).

<sup>10</sup>*Rosario v. I.N.S.*, 962 F.2d 220 (2d Cir. 1992); *George H. and Irene L. Walker Home for Children, Inc. v. Town of Franklin*, 416 Mass. 291, 621 N.E.2d 376, 86 Ed. Law Rep. 345 (1993).

As to the singularity of domicile, see § 2.

<sup>11</sup>*Chamblee v. Rose*, 249 S.W.2d 775 (Ky.

When custody of a child is transferred from one parent to the other, the rules are the same as those that apply generally to the acquisition of a new domicile: there must be both an intent to change the child's domicile and an actual physical delivery of the child to that new domicile. Unless both factors occur concurrently, the child's domicile remains what it was previously.<sup>13</sup>

## § 39 —Effect of death of parent having custody

### Research References

West's Key Number Digest, Domicile ⇐1

Upon the death of the parent having custody of the child, the domicile of the child becomes that of the surviving parent.<sup>1</sup>

## § 40 Abandoned child

### Research References

West's Key Number Digest, Domicile ⇐1

◆ **Definition:** Abandonment occurs when a parent deserts a child or places a child with another with the intention of relinquishing all parental rights and obligations.<sup>1</sup>

A child abandoned by the mother acquires the domicile of the father, while a child abandoned by the father acquires the domicile of the mother.<sup>2</sup> If abandoned by both parents, the child takes on the domicile of the person who stands in loco parentis to the child, such as a natural or an appointed guardian.<sup>3</sup>

1952); *State ex rel. Marthens v. Superior Court for Jefferson County*, 25 Wash. 2d 125, 169 P.2d 626 (1946).

<sup>12</sup>*People ex rel. Wagner v. Torrence*, 94 Colo. 47, 27 P.2d 1038 (1933); *Griffin v. Griffin*, 95 Or. 78, 187 P. 598 (1920).

<sup>13</sup>*Thompson v. Mississippi Farm Bureau Mut. Ins. Co.*, 602 So. 2d 855 (Miss. 1992).

#### [Section 39]

<sup>1</sup>*Ziady v. Curley*, 396 F.2d 873 (4th Cir. 1968); *Baram v. Schwartz*, 151 Conn. 315, 197 A.2d 334 (1964); *B.R.T. v. Executive Director of Social Service Bd. North Dakota*, 391 N.W.2d 594 (N.D. 1986); *Peacock v. Bradshaw*, 145 Tex. 68, 194 S.W.2d 551 (1946).

When parents are divorced and one parent dies, the child acquires the domicile of the surviving parent. *Searle v. Searle*, 2001 UT App 367, 38 P.3d 307 (Utah Ct. App. 2001).

#### [Section 40]

<sup>1</sup>Restatement Second, Conflict of Laws § 22, comment (e).

<sup>2</sup>*Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989).

<sup>3</sup>*Matter of Adoption of Halloway*, 732 P.2d 962 (Utah 1986); *In re Moore's Estate*, 68 Wash. 2d 792, 415 P.2d 653 (1966).

As to a child under guardianship, see § 43.

## § 41 Child of unmarried parents

### Research References

West's Key Number Digest, Domicile ☞1

A child born out of wedlock has the domicile of the mother.<sup>1</sup> In such circumstances, the place of birth and the domicile of the father are immaterial.<sup>2</sup>

## § 42 Effect of death of parent or parents

### Research References

West's Key Number Digest, Domicile ☞1

Domicile of infant on death of both parents; doctrine of natural guardianship, 32 A.L.R. 2d 863

Upon the death of a parent, the child has the domicile of the surviving, supporting parent.<sup>1</sup> Upon the death of both parents, the child takes the domicile of the last surviving parent, and it remains the same until changed by operation of law or the proper act of a guardian.<sup>2</sup> The domicile of the surviving parent at his or her death is determinative, even though the infant is not physically within the jurisdiction at the time,<sup>3</sup> although a parent may change the child's domicile by arranging for the disposition of the child in the event of the death of the last surviving parent.<sup>4</sup>

Unless emancipated, a child is generally legally incapable of changing his or her domicile after the death of both parents.<sup>5</sup>

## § 43 Child under guardianship

### Research References

West's Key Number Digest, Domicile ☞1

Domicile of infant on death of both parents; doctrine of natural guardianship, 32 A.L.R. 2d 863

#### [Section 41]

<sup>1</sup>Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); Rosario v. I.N.S., 962 F.2d 220 (2d Cir. 1992).

For the purpose of determining whether a tribal court is entitled to assert jurisdiction over a custody action pursuant to the Indian Child Welfare Act, an illegitimate child's domicile follows her mother's. People In Interest of G.R.F., 1997 SD 112, 569 N.W.2d 29 (S.D. 1997).

<sup>2</sup>Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); In re Moore's Estate, 68 Wash. 2d 792, 415 P.2d 653 (1966).

#### [Section 42]

<sup>1</sup>B.R.T. v. Executive Director of Social Service Bd. North Dakota, 391 N.W.2d 594 (N.D. 1986).

<sup>2</sup>In re Hall's Guardianship, 235 N.C. 697,

71 S.E.2d 140, 32 A.L.R.2d 856 (1952); State ex rel. Van Loh v. Prosser, 78 S.D. 35, 98 N.W.2d 329 (1959).

As to authority of a guardian to change the domicile of a minor ward, see § 43.

<sup>3</sup>In re Guardianship of Watson, 317 So. 2d 30 (Miss. 1975) (holding that the domicile of orphaned children was the county of their parent's domicile, notwithstanding that the children lived briefly with their maternal grandmother in another county); In re Guardianship of La Velle, 194 Neb. 91, 230 N.W.2d 213 (1975).

<sup>4</sup>In re Duren, 355 Mo. 1222, 200 S.W.2d 343, 170 A.L.R. 391 (1947).

<sup>5</sup>People ex rel. Noonan v. Wingate, 376 Ill. 244, 33 N.E.2d 467 (1941); In re Pratt, 219 Minn. 414, 18 N.W.2d 147 (1945).

As to the fact that an infant cannot unilaterally acquire, change, or determine his or her domicile, generally, see § 37.

A natural guardian of an orphaned child, such as a grandparent, may determine and control the domicile of the child after the death of its parents.<sup>1</sup> By taking up residence with the grandparents, the orphan may acquire their domicile.<sup>2</sup>

◆ **Caution:** The grandparents' rights as natural guardians must yield to those of a legally appointed guardian or of someone entitled to custody of the child on other grounds.<sup>3</sup>

While the courts have been reluctant to extend the doctrine of natural guardianship beyond the grandparents,<sup>4</sup> a testamentary guardian usually stands in the parents' place to the extent of having the power to change the ward's domicile with his or her own.<sup>5</sup> Similarly, if a guardian has been appointed by the court pursuant to the recommendation and petition of the natural guardian, the infant will take the domicile of the appointed guardian.<sup>6</sup>

Whether the guardianship is natural, testamentary, or of another nature, the guardian's power to change the child's domicile may not be abused.<sup>7</sup>

## § 44 Adopted child

### Research References

West's Key Number Digest, Domicile ⇐1

An adopted minor child has the same domicile as the adoptive parent, whether that is the domicile of the parent at the time of the adoption or one subsequently acquired by the parent.<sup>1</sup>

## § 45 Effect of emancipation; marriage of minor

### Research References

West's Key Number Digest, Domicile ⇐1

An emancipated minor may choose a domicile.<sup>1</sup>

#### [Section 43]

<sup>1</sup>In re Guardianship of Lehr, 249 Iowa 625, 87 N.W.2d 909 (1958); In re Hall's Guardianship, 235 N.C. 697, 71 S.E.2d 140, 32 A.L.R.2d 856 (1952); In re Moore's Estate, 68 Wash. 2d 792, 415 P.2d 653 (1966).

<sup>2</sup>In re Hall's Guardianship, 235 N.C. 697, 71 S.E.2d 140, 32 A.L.R.2d 856 (1952).

<sup>3</sup>Ex parte Fletcher, 225 Ala. 139, 142 So. 30 (1932).

<sup>4</sup>Bjornquist v. Boston & A.R. Co., 250 F. 929, 5 A.L.R. 951 (C.C.A. 1st Cir. 1918); In re Hall's Guardianship, 235 N.C. 697, 71 S.E.2d 140, 32 A.L.R.2d 856 (1952).

<sup>5</sup>Delaware, L. & W.R. Co. v. Petrowsky, 250 F. 554 (C.C.A. 2d Cir. 1918); In re

Kiernan, 38 Misc. 394, 77 N.Y.S. 924 (Sur. Ct. 1902).

<sup>6</sup>First Trust & Deposit Co. v. Goodrich, 3 N.Y.2d 410, 165 N.Y.S.2d 510, 144 N.E.2d 396 (1957).

<sup>7</sup>Wilson v. Bearden, 59 S.W.2d 214 (Tex. Civ. App. Fort Worth 1933), writ refused.

#### [Section 44]

<sup>1</sup>Miller v. Bode, 80 Ind. App. 338, 139 N.E. 456 (Div. 2 1923).

#### [Section 45]

<sup>1</sup>Spurgeon v. Mission State Bank, 151 F.2d 702 (C.C.A. 8th Cir. 1945); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Bonneau v. Russell, 117 Vt. 134, 85 A.2d 569 (1952).

- ◆ **Observation:** While there is authority to the contrary,<sup>2</sup> a minor becomes emancipated by marriage and may acquire his or her own domicil.<sup>3</sup>

## § 46 Effect of attainment of majority

### Research References

West's Key Number Digest, Domicile ⇨1

The attainment of majority does not separate a minor from its parents' domicil. The former minor merely acquires the power to possess a separate domicil if desired,<sup>1</sup> and the domicil acquired at birth continues until a new domicil is chosen.<sup>2</sup>

### 3. Incompetent Persons

## § 47 Generally

### Research References

West's Key Number Digest, Domicile ⇨1, 7.1

Change of state or national domicil of mental incompetent, 96 A.L.R. 2d 1236

Incompetency and Commitment Proceedings, 8 Am. Jur. Trials 483

An incompetent person generally lacks the capacity to form the union of choice and intent required to change domicil.<sup>1</sup> Thus, an adult who had been adjudged mentally incompetent at the time of departing for a new residence is incapable of acquiring a domicil of choice, absent an affirmative showing that the person is sufficiently competent to choose a new domicil.<sup>2</sup> In such circumstances, the domicil continues to be what it was when the person became incompetent.<sup>3</sup>

In some jurisdictions, a prior adjudication of incompetency conclusively establishes that a person is unable legally to acquire a new domicil voluntarily until formally restored to competency by a court of the state of his domicil, regardless of the person's present or subsequent actual mental

<sup>2</sup>*Wiggins v. New York Life Ins. Co.*, 2 F. Supp. 365 (E.D. Ky. 1932); *Barker v. Iowa Mut. Ins. Co.*, 241 N.C. 397, 85 S.E.2d 305 (1955).

<sup>3</sup>*Appelt v. Whitty*, 286 F.2d 135 (7th Cir. 1961); *Ward v. Lavy*, 314 S.W.2d 381 (Tex. Civ. App. Eastland 1958); *Bonneau v. Russell*, 117 Vt. 134, 85 A.2d 569 (1952).

#### [Section 46]

<sup>1</sup>*Wiggins v. New York Life Ins. Co.*, 2 F. Supp. 365 (E.D. Ky. 1932).

<sup>2</sup>*Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989).

#### [Section 47]

<sup>1</sup>*In re Olear*, 187 Misc. 2d 706, 724 N.Y. S.2d 283 (Sur. Ct. 2001).

<sup>2</sup>*Matthews v. Matthews*, 141 So. 2d 799, 96 A.L.R.2d 1231 (Fla. Dist. Ct. App. 1st Dist. 1962); *Morrissey v. Rodgers*, 137 Kan. 626, 21 P.2d 359 (1933); *First Trust & Deposit Co. v. Goodrich*, 3 N.Y.2d 410, 165 N.Y.S.2d 510, 144 N.E.2d 396 (1957).

<sup>3</sup>*Matthews v. Matthews*, 141 So. 2d 799, 96 A.L.R.2d 1231 (Fla. Dist. Ct. App. 1st Dist. 1962); *Morrissey v. Rodgers*, 137 Kan. 626, 21 P.2d 359 (1933); *First Trust & Deposit Co. v. Goodrich*, 3 N.Y.2d 410, 165 N.Y.S.2d 510, 144 N.E.2d 396 (1957).



condition.<sup>4</sup> In general, however, the question of capacity in any given case must be evaluated on its facts.<sup>5</sup>

◆ **Caution:** In determining whether an actual intentional change of an incompetent's domicile has occurred, courts must be wary of placing too much reliance on "glimmerings of rationality," especially where prospective beneficiaries of the incompetent's estate may seek an advantage.<sup>6</sup>

## § 48 Change of residence for hospitalization, treatment, or custodial care

### Research References

West's Key Number Digest, Domicile ⇨1

Change of state or national domicile of mental incompetent, 96 A.L.R. 2d 1236

A mentally incompetent person who goes voluntarily to or is sent to another place for hospitalization, medical treatment, custodial care, or improvement of health does not acquire a new domicile by residence in an institution or a private home occupied for such a purpose, regardless of the duration of the stay.<sup>1</sup>

## § 49 Change of domicile by court or act of another

### Research References

West's Key Number Digest, Domicile ⇨1

Change of state or national domicile of mental incompetent, 96 A.L.R. 2d 1236

Under certain circumstances, the domicile of an incompetent person who has been found to be incapable of voluntarily changing his or her domicile, either as a matter of fact or of law, may be changed by the act of another.<sup>1</sup>

◆ **Observation:** Generally, the domicile of an incompetent minor child follows the domicile of the parents or of a person in loco parentis. If, upon reaching majority, the child remains incompetent, and continues to reside with the parents, the incompetent's domicile follows that of the parents.<sup>2</sup>

In the absence of a restrictive statute, a court having jurisdiction over an incompetent person may, in the person's best interest, direct or authorize the guardian or those having control of the person to change his or her domicile

<sup>4</sup>In re Curtiss, 199 N.Y. 36, 92 N.E. 396 (1910).

<sup>5</sup>Matthews v. Matthews, 141 So. 2d 799, 96 A.L.R.2d 1231 (Fla. Dist. Ct. App. 1st Dist. 1962).

<sup>6</sup>In re Seyse, 353 N.J. Super. 580, 803 A.2d 694 (App. Div. 2002).

#### [Section 48]

<sup>1</sup>Fuqua v. Fuqua, 311 So. 2d 568 (La. Ct.

App. 3d Cir. 1975); First Trust & Deposit Co. v. Goodrich, 3 N.Y.2d 410, 165 N.Y.S.2d 510, 144 N.E.2d 396 (1957); In re Coulter's Estate, 406 Pa. 402, 178 A.2d 742 (1962).

#### [Section 49]

<sup>1</sup>Gluc v. Klein, 226 Mich. 175, 197 N.W. 691 (1924).

<sup>2</sup>Mauro v. Department of Mental Hygiene, 207 Cal. App. 2d 381, 24 Cal. Rptr. 505 (1st Dist. 1962).

for him or her.<sup>3</sup> This applies particularly to a court that has appointed a guardian for the incompetent person.<sup>4</sup>

## § 50 —Removal by guardian without court authorization

### Research References

West's Key Number Digest, Domicile ⇐1

Change of state or national domicile of mental incompetent, 96 A.L.R. 2d 1236.

If, in order to change the incompetent person's domicile, a guardian is required to obtain a court order prior to the removal of the incompetent to a new residence, a removal without the authority of the court order is ineffective to change the incompetent's domicile.<sup>1</sup> If, however, a guardian has changed an incompetent's domicile openly and notoriously, and if the court having jurisdiction was advised and implicitly consented to a change of the incompetent's domicile, the implied approval of the guardian's acts may ratify the change of domicile.<sup>2</sup>

◆ **Observation:** Some cases hold that a guardian of an incompetent person does not need prior court approval in order to change the incompetent's domicile, if the change is made in good faith and in the incompetent's best interests.<sup>3</sup>

## B. PERSONS IN PARTICULAR PLACES OR CIRCUMSTANCES

### *Statutory References*

28 U.S.C.A. § 1332(a)

### Research References

#### *West's Digest References*

Domicile ⇐1, 3, 6

#### *Annotation References*

A.L.R. Digest: Domicil §§ 11, 12

A.L.R. Index: Domicile and Residence

## § 51 Foreign country

### Research References

West's Key Number Digest, Domicile ⇐3

While there is a strong presumption that a person in a foreign country

<sup>3</sup>Hayward v. Hayward, 65 Ind. App. 440, 115 N.E. 966 (Div. 2 1917).

<sup>4</sup>Hayward v. Hayward, 65 Ind. App. 440, 115 N.E. 966 (Div. 2 1917).

#### [Section 50]

<sup>1</sup>Brown v. Brown, 86 Misc. 2d 71, 381 N.Y.

S.2d 803 (Sup 1976). Town of Carlton v. State Dept. of Public Welfare, 271 Wis. 465, 74 N.W.2d 340 (1956).

<sup>2</sup>In re Robitaille, 78 Misc. 108, 138 N.Y.S. 391 (Sur. Ct. 1912).

<sup>3</sup>Grier v. Grier's Estate, 252 Minn. 143, 89 N.W.2d 398 (1958).

intends to retain his or her national domicil,<sup>1</sup> a citizen of one country may acquire a domicil in another country<sup>2</sup> without naturalization.<sup>3</sup> Whether or not the person becomes domiciled in the foreign country is measured by the person's actions and intent.<sup>4</sup>

◆ **Caution:** No matter how long continued, a sojourn, detention, or visit in a foreign country without an intention to remain there permanently does not change one's residence,<sup>5</sup> and the pursuit of employment in the foreign country does not, by itself, amount to a change of domicil.<sup>6</sup>

Being subject to deportation if discovered, an illegal alien arguably cannot form a lawful intent to remain in the United States.<sup>7</sup> If some set of circumstances would allow an alien's immigration status to become lawful, however, the alien's intent to remain is not objectively unreasonable, and the alien may acquire domicil as a matter of either federal<sup>8</sup> or state law.<sup>9</sup>

◆ **Observation:** Illegal aliens have acquired domiciliary status by possessing the required concurrence of physical presence and an intent to establish domicil.<sup>10</sup>

For purposes of federal jurisdiction, an alien admitted to the United States for permanent residence is deemed a citizen of the state in which the alien is domiciled.<sup>11</sup>

## § 52 Vehicle or vessel

### Research References

West's Key Number Digest, Domicile ⇐1

A person who makes a home in a boat, car, van, or other vehicle can acquire a domicil only in the place, if any, where the vehicle regularly remains for a

#### [Section 51]

<sup>1</sup>§ 55.

<sup>2</sup>*Rosario v. I.N.S.*, 962 F.2d 220 (2d Cir. 1992); *Garcia v. Angulo*, 335 Md. 475, 644 A.2d 498 (1994).

<sup>3</sup>*Elkins v. Moreno*, 435 U.S. 647, 98 S. Ct. 1338, 55 L. Ed. 2d 614 (1978), certified question answered on other grounds, 284 Md. 425, 397 A.2d 1009 (1979); *Rosario v. I.N.S.*, 962 F.2d 220 (2d Cir. 1992).

<sup>4</sup>*Matter of Brunner's Estate*, 51 A.D.2d 995, 380 N.Y.S.2d 744 (2d Dep't 1976), order aff'd, 41 N.Y.2d 917, 394 N.Y.S.2d 621, 363 N.E.2d 346 (1977).

As to the intention to change domicil, generally, see § 19.

<sup>5</sup>*Guessefeldt v. McGrath*, 342 U.S. 308, 72 S. Ct. 338, 96 L. Ed. 342 (1952).

As to the effect on domicil of a temporary absence, generally, see § 25.

<sup>6</sup>*Maple Island Farm v. Bitterling*, 196 F.2d 55 (8th Cir. 1952).

As to the domicil of ambassadors and other public employees abroad, see § 31.

<sup>7</sup>*Castellon-Contreras v. I.N.S.*, 45 F.3d 149 (7th Cir. 1995).

<sup>8</sup>*Elkins v. Moreno*, 435 U.S. 647, 98 S. Ct. 1338, 55 L. Ed. 2d 614 (1978), certified question answered on other grounds, 284 Md. 425, 397 A.2d 1009 (1979).

<sup>9</sup>*Garcia v. Angulo*, 335 Md. 475, 644 A.2d 498 (1994).

<sup>10</sup>*U.S. v. Otherson*, 480 F. Supp. 1369 (S.D. Cal. 1979); *Seren v. Douglas*, 30 Colo. App. 110, 489 P.2d 601 (1971); *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431 (D.C. 1972); *Garcia v. Angulo*, 335 Md. 475, 644 A.2d 498 (1994).

As to the concurrent elements of presence and intent, see § 17.

<sup>11</sup>28 U.S.C.A. § 1332(a) discussed in *Am. Jur. 2d, Aliens and Citizens* § 2572.

considerable time each year and for a longer time than the vehicle regularly remains elsewhere.<sup>1</sup>

## § 53 Residence on boundary

### Research References

West's Key Number Digest, Domicile ⌘6

If a person's home lies on a dividing line between two political subdivisions, the person's residence will be deemed to be in the jurisdiction in which the most necessary and indispensable part of the house is situated, which is the part where one eats and sleeps.<sup>1</sup> If the court can ascertain exactly where the occupant of a house so divided sleeps, that location determines the jurisdiction in which the residence is located.<sup>2</sup>

## V. PROOF AND EVIDENCE

### A. IN GENERAL

### Research References

#### *West's Digest References*

Domicile ⌘7 to 9

#### *Annotation References*

A.L.R. Digest: Domicil § 1; Evidence § 134

A.L.R. Index: Domicile and Residence

#### *Trial Strategy References*

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

Locating and Interviewing Witnesses, 2 Am. Jur. Trials 229

## § 54 Residence; presumption and inference

### Research References

West's Key Number Digest, Domicile ⌘7

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Locating and Interviewing Witnesses, 2 Am. Jur. Trials 229

Residence, being a visible fact, is not usually in doubt.<sup>1</sup> While the fact of residence does not alone determine domicil,<sup>2</sup> actual residence in a place is a

---

#### [Section 52]

<sup>1</sup>State ex rel. Wooters v. Dardenne, 131 La. 109, 59 So. 32 (1912).

#### [Section 53]

<sup>1</sup>Blaine v. Murphy, 265 F. 324 (D. Mass. 1920).

<sup>2</sup>Whitehouse v. C.I.R., 963 F.2d 1 (1st Cir. 1992), as amended, (July 7, 1992); Teel v. Hamilton-Wenham Regional School Dist., 13

Mass. App. Ct. 345, 433 N.E.2d 907, 3 Ed. Law Rep. 722 (1982).

#### [Section 54]

<sup>1</sup>Belanger v. Belanger, 240 A.2d 743 (Me. 1968).

<sup>2</sup>Moore v. Hayes, 1987 OK 82, 744 P.2d 934 (Okla. 1987); Elwert v. Elwert, 196 Or. 256, 248 P.2d 847, 36 A.L.R.2d 741 (1952).

As to the definition of residence, see § 8.

circumstance tending to prove domicile there;<sup>3</sup> it is prima facie evidence of domicile.<sup>4</sup> Until facts to the contrary are forthcoming, the place where one lives is presumed to be one's domicile,<sup>5</sup> and long-continued residence strengthens the presumption.<sup>6</sup>

While a person may have many residences, he or she only has one domicile, and in determining which of a person's residences is his or her domicile, courts will look to intent.<sup>7</sup>

♦ **Observation:** Important facts in determining the domicile of a person who has more than one residence are the physical character of each, the time spent and the things done in each place, and whether or not there is an intention to return to the original domicile.<sup>8</sup>

## § 55 Presumption of continuation of domicile

### Research References

West's Key Number Digest, Domicile ⚡8

Residence or domicile, for purpose of divorce action, of one in armed forces, 21 A.L.R. 2d 1163

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

A domicile of origin or choice is presumed to continue until it is shown to have changed.<sup>1</sup> In other words, there is a presumption against a change of

<sup>3</sup>*Bolles v. Bolles*, 364 So. 2d 813 (Fla. Dist. Ct. App. 3d Dist. 1978); *Moore v. Hayes*, 1987 OK 82, 744 P.2d 934 (Okla. 1987).

A person was a resident of the state where she lived with her parent, even though she represented herself as resident of another state when dealing with insurance companies and credit card companies, declared a Tennessee post office box as her address on employment applications, and continued to purchase Tennessee license plates for her vehicle. *Baites v. State Farm Mut. Auto. Ins. Co.*, 733 So. 2d 320 (Miss. Ct. App. 1998).

<sup>4</sup>*New York Trust Co. v. Riley*, 24 Del. Ch. 354, 16 A.2d 772 (1940), *aff'd*, 315 U.S. 343, 62 S. Ct. 608, 86 L. Ed. 885 (1942); *Schillerstrom v. Schillerstrom*, 75 N.D. 667, 32 N.W.2d 106, 2 A.L.R.2d 271 (1948).

<sup>5</sup>*District of Columbia v. Murphy*, 314 U.S. 441, 62 S. Ct. 303, 86 L. Ed. 329 (1941); *Mitchell v. Delaware State Tax Com'r*, 42 Del. 589, 42 A.2d 19 (Super. Ct. 1945); *In re Orshansky*, 804 A.2d 1077 (D.C. 2002).

Whenever a person has acquired a residence and it is his or her only obvious place of residence, it is presumed to be his or her domicile. *McCreary Enterprises, L.L.C. v. Hemmans*, 802 So. 2d 807 (La. Ct. App. 5th

Cir. 2001), writ denied, 808 So. 2d 345 (La. 2002), reconsideration not considered, 811 So. 2d 940 (La. 2002).

The law presumes that where a person actually lives and votes is that person's domicile, unless special circumstances explain and rebut the presumption. *Oglesby v. Williams*, 372 Md. 360, 812 A.2d 1061 (2002).

<sup>6</sup>*Schillerstrom v. Schillerstrom*, 75 N.D. 667, 32 N.W.2d 106, 2 A.L.R.2d 271 (1948).

<sup>7</sup>*Cade v. Lombard*, 727 So. 2d 1221 (La. Ct. App. 4th Cir. 1999).

<sup>8</sup>*Predmore v. Predmore*, 206 W. Va. 176, 522 S.E.2d 644 (1999).

### [Section 55]

<sup>1</sup>*Willis v. Westin Hotel Co.*, 651 F. Supp. 598 (S.D. N.Y. 1986); *White v. All America Cable & Radio, Inc.*, 642 F. Supp. 69 (D.P.R. 1986); *In re Marriage of Tucker*, 226 Cal. App. 3d 1249, 277 Cal. Rptr. 403 (4th Dist. 1991); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Wamsley v. Wamsley*, 333 Md. 454, 635 A.2d 1322 (1994); *Manthey v. Commissioner of Revenue*, 468 N.W.2d 548 (Minn. 1991).

As to domicile of origin, generally, see § 5.

As to domicile of choice, generally, see § 6.

domicil<sup>2</sup> or legal residence,<sup>3</sup> and a domicile once established or acquired continues until it is superseded by a new one.<sup>4</sup>

There is a strong presumption that a person in a foreign country intends to retain his or her national domicil.<sup>5</sup> The presumption may be overcome, however, by satisfactory proof sustaining a change of domicil.<sup>6</sup>

## § 56 Burden of proof

### Research References

West's Key Number Digest, Domicile ☞8

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

It is a general rule that the burden of showing a change of domicil is upon the party asserting the change.<sup>1</sup> However, proof of residence elsewhere rebuts the presumption<sup>2</sup> and places the burden of proof on the party denying the change.<sup>3</sup>

♦ **Observation:** If the evidence is conflicting, the original or former domicil is favored over a newer domicil of choice.<sup>4</sup>

A party alleging a change of domicil must establish this by a preponderance of the evidence<sup>5</sup> or by clear and convincing evidence.<sup>6</sup>

<sup>2</sup>Becker v. Dean, 854 So. 2d 864 (La. 2003), opinion issued, (Sept. 26, 2003).

Domicile, once established, is presumed to continue until it is shown to have been changed. In re Orshansky, 804 A.2d 1077 (D.C. 2002).

<sup>3</sup>B.R.T. v. Executive Director of Social Service Bd. North Dakota, 391 N.W.2d 594 (N.D. 1986).

<sup>4</sup>Skieff v. Cole-Skieff, 2003 WL 22111145 (Ala. Civ. App. 2003); In re Seyse, 353 N.J. Super. 580, 803 A.2d 694 (App. Div. 2002); State ex rel. Sandy v. Johnson, 212 W. Va. 343, 571 S.E.2d 333 (2002).

<sup>5</sup>In re Green's Estate, 99 Misc. 582, 164 N.Y.S. 1063 (Sur. Ct. 1917), aff'd, 179 A.D. 890, 165 N.Y.S. 1088 (1st Dep't 1917).

As to domicil in a foreign country, generally, see § 51.

<sup>6</sup>In re Appleby's Estate, 106 N.Y.S.2d 294 (Sur. Ct. 1951), order aff'd, 279 A.D. 993, 112 N.Y.S.2d 493 (1st Dep't 1952).

### [Section 56]

<sup>1</sup>White v. All America Cable & Radio, Inc., 642 F. Supp. 69 (D.P.R. 1986); Ex parte Weissinger, 247 Ala. 113, 22 So. 2d 510 (1945); In re Estate of Derricotte, 744 A.2d 535 (D.C. 2000); Salvatierra v. Calderon, 836 So. 2d 149 (La. Ct. App. 1st Cir. 2002); Horvitz v. Com-

missioner of Revenue, 51 Mass. App. Ct. 386, 747 N.E.2d 177 (2001); Keating v. Keating, 399 N.W.2d 872 (N.D. 1987); B.R.T. v. Executive Director of Social Service Bd. North Dakota, 391 N.W.2d 594 (N.D. 1986); State ex rel. Sandy v. Johnson, 212 W. Va. 343, 571 S.E.2d 333 (2002).

The burden of proof is on one asserting that an earlier domicil was abandoned in favor of a later one. State of Texas v. State of Florida, 306 U.S. 398, 59 S. Ct. 563, 83 L. Ed. 817, 121 A.L.R. 1179 (1939).

Domicil is presumed to continue, and the burden of proof ordinarily rests on the party asserting abandonment of one domicil to demonstrate acquisition of another. Keveloh v. Carter, 699 So. 2d 285 (Fla. Dist. Ct. App. 5th Dist. 1997).

<sup>2</sup>Wiseman v. Wiseman, 216 Tenn. 702, 393 S.W.2d 892 (1965).

As to the presumption of residence as fixing domicil, see § 54.

<sup>3</sup>Mitchell v. Delaware State Tax Com'r, 42 Del. 589, 42 A.2d 19 (Super. Ct. 1945).

<sup>4</sup>Ex parte Weissinger, 247 Ala. 113, 22 So. 2d 510 (1945); Elwert v. Elwert, 196 Or. 256, 248 P.2d 847, 36 A.L.R.2d 741 (1952).

<sup>5</sup>Newman v. Newman, 558 So. 2d 821 (Miss. 1990).

## § 57 Admissibility of declarations

### Research References

West's Key Number Digest, Domicile ⇨9

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

A person's statements of his or her intent as to domicile are admissible and should be considered in determining the person's domicile.<sup>1</sup>

Election registers,<sup>2</sup> tax returns,<sup>3</sup> and wills<sup>4</sup> are admissible on the question of the declarant's residence or domicile.

## § 58 Proof of intention

### Research References

West's Key Number Digest, Domicile ⇨8

Nature and location of one's business or calling as element in determining domicile in divorce cases, 36 A.L.R. 2d 756

What constitutes "estate" of nonresident decedent within statute providing for local ancillary administration where decedent died leaving an estate in jurisdiction, 34 A.L.R. 2d 1270

Recognition as to marital status of foreign divorce decree attacked on ground of lack of domicile, since Williams decision, 28 A.L.R. 2d 1303

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

◆ **Observation:** While residence, being a visible fact, is not usually in doubt,<sup>1</sup> the intention to remain is not so easily proved.<sup>2</sup>

To prove that one's change of abode was accompanied by an intention to change one's domicile, all acts that fairly indicate such a purpose are competent and admissible.<sup>3</sup>

## B. WEIGHT AND SUFFICIENCY

### Research References

#### *West's Digest References*

Domicile ⇨10

<sup>6</sup>In re Estate of Donahue, 262 A.D.2d 840, 692 N.Y.S.2d 225 (3d Dep't 1999).

#### [Section 57]

<sup>1</sup>Blount v. Boston, 351 Md. 360, 718 A.2d 1111 (1998).

<sup>2</sup>Blackburn v. Blackburn, 41 Haw. 37, 1955 WL 8776 (1955); Shenton v. Abbott, 178 Md. 526, 15 A.2d 906 (1940).

<sup>3</sup>Gallagher v. Board of Sup'rs of Elections, 219 Md. 192, 148 A.2d 390 (1959).

<sup>4</sup>Ennis v. Smith, 55 U.S. 400, 14 How. 400, 14 L. Ed. 472 (1852); In re Michelsohn's Will, 136 N.J. Eq. 387, 37 A.2d 118 (Prerog. Ct.

1944); Matter of Estate of Burshiem, 483 N.W.2d 175 (N.D. 1992).

#### [Section 58]

<sup>1</sup>As to proof of residence, generally, see § 54.

<sup>2</sup>Belanger v. Belanger, 240 A.2d 743 (Me. 1968).

<sup>3</sup>Penn Mut. Life Ins. Co. v. Fields, 81 F. Supp. 54 (S.D. Cal. 1948); Jennings v. Fanti, 96 F. Supp. 264 (M.D. Pa. 1951); Phillips v. Melton, 222 Ark. 162, 257 S.W.2d 931 (1953); Johnson v. Johnson, 191 So. 2d 840 (Miss. 1966); Matter of Brunner's Estate, 41 N.Y.2d 917, 394 N.Y.S.2d 621, 363 N.E.2d 346 (1977).

### *Annotation References*

A.L.R. Digest: Domicile § 1

A.L.R. Index: Domicile and Residence

### *Trial Strategy References*

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

## § 59 Generally

### Research References

West's Key Number Digest, Domicile ⇨10

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

The weight to be given to the various facts and circumstances indicative of domicile depends upon the circumstances of the case.<sup>1</sup> The determination of domicile does not depend upon any one factor or circumstance,<sup>2</sup> but upon circumstances that together show a preponderance of evidence in favor of a place as domicile.<sup>3</sup>

◆ **Observation:** Filing a homestead exemption may conclusively establish the fact of domicile.<sup>4</sup>

## § 60 Declarations

### Research References

West's Key Number Digest, Domicile ⇨10

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

An oral declaration<sup>1</sup> or a written declaration in a tax return,<sup>2</sup> deed,<sup>3</sup> insur-

#### [Section 59]

<sup>1</sup>Matter of Estate of Burshiem, 483 N.W.2d 175 (N.D. 1992).

<sup>2</sup>State of Texas v. State of Florida, 306 U.S. 398, 59 S. Ct. 563, 83 L. Ed. 817, 121 A.L.R. 1179 (1939); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988) (holding that the determination of domicile is to be made in context, after a consideration of all facts of the case); Stevenson v. Steele, 352 Md. 60, 720 A.2d 1176 (1998); Fowler v. Auto Club Insurance Association, 254 Mich. App. 362, 656 N.W.2d 856 (2002); Aetna Cas. and Sur. Co. v. Williams, 623 So. 2d 1005 (Miss. 1993); Matter of Brunner's Estate, 41 N.Y.2d 917, 394 N.Y.S.2d 621, 363 N.E.2d 346 (1977).

However, when a party physically resides in one location, the intention to return to another location is usually of controlling importance in the determination of the whole question of domicile. Livermore v. Livermore, 822 So. 2d 437 (Ala. Civ. App. 2001).

<sup>3</sup>Fry v. Fry, 332 Ill. App. 484, 76 N.E.2d 225 (1st Dist. 1947); Newman v. Newman, 558 So. 2d 821 (Miss. 1990).

When there is no declaration that a person has changed his or her domicile, proof of the person's intention depends upon the circumstances. Becker v. Dean, 854 So. 2d 864 (La. 2003), opinion issued, (Sept. 26, 2003).

<sup>4</sup>Gadd v. Thompson, 517 So. 2d 576 (Miss. 1987) (overruled on other grounds by, Foster v. Harden, 536 So. 2d 905 (Miss. 1988)).

As to who may claim a homestead exemption, generally, see Am. Jur. 2d, Homestead § 15.

#### [Section 60]

<sup>1</sup>Perito v. Perito, 756 P.2d 895 (Alaska 1988).

Intent is a highly significant factor in determining whether there has been a change of domicile, and an individual's intent is subjective, such that the best proof of domicile is



ance policy,<sup>4</sup> will,<sup>5</sup> letter,<sup>6</sup> election register,<sup>7</sup> hotel register,<sup>8</sup> or mortgage, lease, contract, or other instrument<sup>9</sup> constitutes some evidence as to domicile. The weight to be given to such declarations is to be determined by the time and circumstances under which they are made.<sup>10</sup>

A declaration found in a solemn instrument such as a will is entitled to great weight.<sup>11</sup> Most declarations, however, are not conclusive<sup>12</sup> and are to be considered in light of the motive of the person making the declaration.<sup>13</sup> Declarations are subject to the infirmity of any self-serving declaration<sup>14</sup> and may be contradicted by other declarations and inconsistent acts.<sup>15</sup> Furthermore, while competent as evidence of the required intention to establish domicile at a given place of residence, statements alone cannot prove residence there.<sup>16</sup>

## § 61 —Consideration in conjunction with other evidence

### Research References

West's Key Number Digest, Domicile ⇨10

where he or she says it is. *Keveloh v. Carter*, 699 So. 2d 285 (Fla. Dist. Ct. App. 5th Dist. 1997).

<sup>2</sup>*O'Rourke v. Utah State Tax Com'n*, 830 P.2d 230 (Utah 1992).

<sup>3</sup>*Shenton v. Abbott*, 178 Md. 526, 15 A.2d 906 (1940).

<sup>4</sup>*Croop v. Walton*, 199 Ind. 262, 157 N.E. 275, 53 A.L.R. 1386 (1927).

<sup>5</sup>*Cromwell v. Neeld*, 15 N.J. Super. 296, 83 A.2d 337 (App. Div. 1951); *Matter of Estate of Burshiem*, 483 N.W.2d 175 (N.D. 1992).

<sup>6</sup>*Gamble v. Dawson*, 67 Wash. 72, 120 P. 1060 (1912).

<sup>7</sup>*Warren v. Warren*, 73 Fla. 764, 75 So. 35 (1917).

<sup>8</sup>*New York Trust Co. v. Riley*, 24 Del. Ch. 354, 16 A.2d 772 (1940), *aff'd*, 315 U.S. 343, 62 S. Ct. 608, 86 L. Ed. 885 (1942).

<sup>9</sup>*Croop v. Walton*, 199 Ind. 262, 157 N.E. 275, 53 A.L.R. 1386 (1927).

<sup>10</sup>*In re Ingersol's Estate*, 128 Mont. 230, 272 P.2d 1003 (1954).

As to evidence of domicile of choice, see *Restatement Second, Conflict of Laws* § 20, special note on evidence of a domicile of choice.

<sup>11</sup>*Matter of Estate of Burshiem*, 483 N.W.2d 175 (N.D. 1992).

An intention to change domicile may be proved by an express declaration in writing registered in the parishes of the old and new residences or, in the absence of a declaration, by the circumstances surrounding the residence. *Davis v. Glen Eagle Ship Manage-*

*ment Corp.*, 700 So. 2d 228 (La. Ct. App. 4th Cir. 1997).

<sup>12</sup>*In re Glassford's Estate*, 114 Cal. App. 2d 181, 249 P.2d 908, 34 A.L.R.2d 1259 (2d Dist. 1952); *Kanz v. Wilson*, 703 So. 2d 1331 (La. Ct. App. 1st Cir. 1997); *Trust Co. of New Jersey v. Spalding*, 125 N.J. Eq. 66, 4 A.2d 401 (Ch. 1939).

<sup>13</sup>*Townsend v. Bucyrus-Erie Co.*, 144 F.2d 106 (C.C.A. 10th Cir. 1944); *In re Benjamin's Estate*, 176 Misc. 518, 27 N.Y.S.2d 948 (Sur. Ct. 1941); *State v. Stalnaker*, 186 W. Va. 233, 412 S.E.2d 231 (1991).

One's declarations as to place of domicile are not controlling where they are prompted by a desire to avoid taxation. *In re Michelson's Will*, 136 N.J. Eq. 387, 37 A.2d 118 (Prerog. Ct. 1944).

<sup>14</sup>*District of Columbia v. Murphy*, 314 U.S. 441, 62 S. Ct. 303, 86 L. Ed. 329 (1941).

Absent other evidence, self-serving declarations may be insufficient to establish the necessary intent. *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988).

The intention to change domicile is to be inferred from facts and circumstances, not from self-serving representations. *State ex rel. Sandy v. Johnson*, 212 W. Va. 343, 571 S.E.2d 333 (2002).

<sup>15</sup>§ 61.

<sup>16</sup>*State of Texas v. State of Florida*, 306 U.S. 398, 59 S. Ct. 563, 83 L. Ed. 817, 121 A.L.R. 1179 (1939); *Penn Mut. Life Ins. Co. v. Fields*, 81 F. Supp. 54 (S.D. Cal. 1948).

In establishing domicile, intent is based upon the actual state of the facts and not what one declares them to be,<sup>1</sup> and the acts and conduct of the parties speak louder than words when it comes to a determination of domicile.<sup>2</sup> Thus, for purposes of determining a person's domicile, the person's declared intentions may be discounted when they conflict with the facts,<sup>3</sup> and declarations as to domicile may be contradicted by evidence of acts and conduct inconsistent with such declarations.<sup>4</sup> In such circumstances, conduct has greater evidential value than does a declaration.<sup>5</sup>

◆ **Observation:** The focus of the inquiry remains the intent of the person claiming domicile.<sup>6</sup>

## § 62 Exercise of civil and political rights

### Research References

West's Key Number Digest, Domicile ⇨10

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

The failure to perform the duties and avail oneself of the privileges of citizenship in the community of one's new residence is a significant,<sup>1</sup> but not controlling,<sup>2</sup> indication that no change in domicile is planned. Conversely, the exercise of the right to vote or of other civil and political rights in a certain place is evidence of domicile in that place.<sup>3</sup> Indeed, it has been held that the place of voting is the highest evidence of domicile.<sup>4</sup>

◆ **Caution:** The fact that an individual exercises the right to vote while compelled to be in a foreign jurisdiction does not, in and of itself, constitute a change of domicile.<sup>5</sup>

Whether a person holds an office in the jurisdiction is also a factor to be

#### [Section 61]

<sup>1</sup>Lacroix v. Lacroix, 742 So. 2d 1036 (La. Ct. App. 2d Cir. 1999), writ denied, 752 So. 2d 167 (La. 1999).

<sup>2</sup>Salvatierra v. Calderon, 836 So. 2d 149 (La. Ct. App. 1st Cir. 2002).

<sup>3</sup>State ex rel. Jealous of Him v. Mills, 2001 SD 65, 627 N.W.2d 790 (S.D. 2001).

<sup>4</sup>District of Columbia v. Murphy, 314 U.S. 441, 62 S. Ct. 303, 86 L. Ed. 329 (1941); Veseth v. Veseth, 147 Mont. 169, 410 P.2d 930 (1966); Elwert v. Elwert, 196 Or. 256, 248 P.2d 847, 36 A.L.R.2d 741 (1952).

<sup>5</sup>In re Lagersen's Estate, 169 Cal. App. 2d 359, 337 P.2d 102 (3d Dist. 1959); Lyons v. Egan, 110 Colo. 227, 132 P.2d 794 (1942); Barrett v. Parks, 352 Mo. 974, 180 S.W.2d 665 (1944).

<sup>6</sup>Manthey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991).

#### [Section 62]

<sup>1</sup>Elwert v. Elwert, 196 Or. 256, 248 P.2d 847, 36 A.L.R.2d 741 (1952).

<sup>2</sup>District of Columbia v. Murphy, 314 U.S. 441, 62 S. Ct. 303, 86 L. Ed. 329 (1941); Bay State Wholesale Drug Co. v. Whitman, 280 Mass. 188, 182 N.E. 361 (1932).

<sup>3</sup>Mitchell v. U.S., 88 U.S. 350, 22 L. Ed. 584 (1874); McHaney v. Cunningham, 4 F.2d 725 (W.D. La. 1925); Manthey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991); Matter of Estate of Burshiem, 483 N.W.2d 175 (N.D. 1992); Chappell v. Chappell, 1956 OK 190, 298 P.2d 768, 58 A.L.R.2d 1214 (Okla. 1956).

<sup>4</sup>Oglesby v. Williams, 372 Md. 360, 812 A.2d 1061 (2002).

<sup>5</sup>Petition of Pippy, 711 A.2d 1048 (Pa. Commw. Ct. 1998), aff'd, 551 Pa. 210, 709 A.2d 905 (1998).

considered.<sup>6</sup> A public official who discharges his or her duties is presumed to continue the domicile he or she had when elected.<sup>7</sup>

## § 63 Payment of taxes

### Research References

West's Key Number Digest, Domicile ☞10

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

While not controlling, the payment of taxes that are assessable at the domicile of the taxpayer, such as personal property taxes<sup>1</sup> and income taxes,<sup>2</sup> is of some weight in determining domicile.<sup>3</sup> Conversely, the failure to pay taxes in the alleged new domicile tends to show no change of domicile.<sup>4</sup>

## § 64 License or permit

### Research References

West's Key Number Digest, Domicile ☞10

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

The failure to secure a license ordinarily required of domiciliary residents of a state, such as an automobile license or a business permit, indicates an intention not to establish a domicile in that state.<sup>1</sup> Conversely, securing a license or permit in a state or registering a vehicle there is evidence of an intent to establish domicile.<sup>2</sup>

## § 65 Location of business or occupation

### Research References

West's Key Number Digest, Domicile ☞10

<sup>6</sup>Moore v. Hayes, 1987 OK 82, 744 P.2d 934 (Okla. 1987).

<sup>7</sup>McClendon v. Bel, 797 So. 2d 700 (La. Ct. App. 1st Cir. 2000).

#### [Section 63]

<sup>1</sup>Croop v. Walton, 199 Ind. 262, 157 N.E. 275, 53 A.L.R. 1386 (1927).

<sup>2</sup>Elwert v. Elwert, 196 Or. 256, 248 P.2d 847, 36 A.L.R.2d 741 (1952).

<sup>3</sup>In re Glassford's Estate, 114 Cal. App. 2d 181, 249 P.2d 908, 34 A.L.R.2d 1259 (2d Dist. 1952).

Where a person's actual residence and/or place of voting are not so clear or there are special circumstances explaining a particular place of abode or place of voting, the court will look to a myriad of other factors in deciding the person's domicile, such as paying of taxes and statements on tax returns, ownership of

property, where the person's children attend school, the address at which the person receives mail, statements as to residency in contracts, statements on licenses or governmental documents, where personal belongings are kept, which jurisdiction's banks are utilized, and any other facts revealing contact with one or the other jurisdiction. Blount v. Boston, 351 Md. 360, 718 A.2d 1111 (1998).

<sup>4</sup>Elwert v. Elwert, 196 Or. 256, 248 P.2d 847, 36 A.L.R.2d 741 (1952).

#### [Section 64]

<sup>1</sup>Elwert v. Elwert, 196 Or. 256, 248 P.2d 847, 36 A.L.R.2d 741 (1952).

<sup>2</sup>Bank One, Texas, N.A. v. Montle, 964 F.2d 48 (1st Cir. 1992); Manthey v. Commissioner of Revenue, 468 N.W.2d 548 (Minn. 1991); O'Rourke v. Utah State Tax Com'n, 830 P.2d 230 (Utah 1992).

Nature and location of one's business or calling as element in determining domicile in divorce cases, 36 A.L.R. 2d 756

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

The location of a person's business, profession, or occupation is a nonconclusive<sup>1</sup> factor in the determination of domicile.<sup>2</sup> If a person maintains two or more residences in different localities, the fact that the person carries on business in one of them may be of some weight in determining the person's intention.<sup>3</sup> A business or occupation conducted at the person's last domicile tends to show that the person has not abandoned that place as a domicile, even though the person is no longer physically present there.<sup>4</sup>

◆ **Reminder:** A merely temporary absence from one's domiciliary state or county because of work or employment at another place does not bring about a change of domicile.<sup>5</sup> Neither does employment at a particular place bring about a change of domicile, if the intention to remain at that place is contingent upon the permanency of the employment.<sup>6</sup>

## § 66 Ownership, disposition, or acquisition of property

### Research References

West's Key Number Digest, Domicile ¶10

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

Ownership of the house where one lives is evidence that one's domicile is the place where the house is located.<sup>1</sup> In addition, the sale or disposition of the dwelling may be some evidence of an intention to abandon a domicile and establish another,<sup>2</sup> although other circumstances may effectively negate an inference of such intent.<sup>3</sup> Likewise, the purchase of a dwelling in another state is nonconclusive evidence of an intent to acquire a domicile in that state.<sup>4</sup>

The failure to purchase property in the state claimed to be the new domicile

### [Section 65]

<sup>1</sup>Stimmel v. Stimmel, 218 Ark. 293, 235 S.W.2d 959 (1951); Miller's Estate v. Commissioner of Taxation, 240 Minn. 18, 59 N.W.2d 925 (1953); Lynch v. Lynch, 210 Miss. 810, 50 So. 2d 378 (1951).

<sup>2</sup>Comer v. Titan Tool, Inc., 875 F. Supp. 255 (S.D. N.Y. 1995); Kaskel v. New York State Tax Com'n, 111 A.D.2d 431, 488 N.Y. S.2d 322 (3d Dep't 1985); Moore v. Hayes, 1987 OK 82, 744 P.2d 934 (Okla. 1987); Elwert v. Elwert, 196 Or. 256, 248 P.2d 847, 36 A.L.R.2d 741 (1952).

<sup>3</sup>Croop v. Walton, 199 Ind. 262, 157 N.E. 275, 53 A.L.R. 1386 (1927); Baker v. Baker, Eccles & Co., 162 Ky. 683, 173 S.W. 109 (1915), aff'd, 242 U.S. 394, 37 S. Ct. 152, 61 L. Ed. 386 (1917).

As to the nature of the intention to change domicile, see § 19.

<sup>4</sup>Elwert v. Elwert, 196 Or. 256, 248 P.2d 847, 36 A.L.R.2d 741 (1952).

<sup>5</sup>§ 25.

<sup>6</sup>§ 21.

### [Section 66]

<sup>1</sup>Gilbert v. David, 235 U.S. 561, 35 S. Ct. 164, 59 L. Ed. 360 (1915); Moore v. Hayes, 1987 OK 82, 744 P.2d 934 (Okla. 1987).

<sup>2</sup>Gilbert v. David, 235 U.S. 561, 35 S. Ct. 164, 59 L. Ed. 360 (1915); Cromwell v. Neeld, 15 N.J. Super. 296, 83 A.2d 337 (App. Div. 1951).

<sup>3</sup>Matter of Estate of Burshiem, 483 N.W.2d 175 (N.D. 1992).

<sup>4</sup>Matter of Estate of Burshiem, 483 N.W.2d

constitutes some evidence of an intent not to acquire a new domicile, but the failure is not controlling and may be negated by other circumstances.<sup>5</sup>

## § 67 Selection of burial place

### Research References

West's Key Number Digest, Domicile ⇨10

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

Although choosing a final resting place may be considered in determining a person's domicile,<sup>1</sup> it should be considered very lightly,<sup>2</sup> because many sentimental reasons influence the selection of burial places for our dead, having little reference to legal domicile.<sup>3</sup>

## § 68 Church, social, and club activities

### Research References

West's Key Number Digest, Domicile ⇨10

Establishment of Person's Domicile, 39 Am. Jur. Proof of Facts 2d 587

Nonestablishment of Domicile in Foreign Jurisdiction, 4 Am. Jur. Proof of Facts 2d 595

A person's church and community activities,<sup>1</sup> identification with regard to the social life of a place,<sup>2</sup> and membership in lodges and clubs<sup>3</sup> all have some bearing on the question of domicile.

## VI. TRIAL AND JUDGMENT

### Research References

#### *West's Digest References*

Domicile ⇨11

#### *Annotation References*

A.L.R. Digest: Domicil § 1; Judgment § 345; Trial § 224

A.L.R. Index: Domicile and Residence

#### *Forms References*

Am. Jur. Pleading and Practice Forms, Domicil § 15

175 (N.D. 1992); Gardner v. Gardner, 118 Utah 496, 222 P.2d 1055 (1950).

<sup>5</sup>Paudler v. Paudler, 185 F.2d 901 (5th Cir. 1950).

#### [Section 67]

<sup>1</sup>Warren v. Warren, 73 Fla. 764, 75 So. 35 (1917); Croop v. Walton, 199 Ind. 262, 157 N.E. 275, 53 A.L.R. 1386 (1927); Wilberding v. Miller, 88 Ohio St. 609, 90 Ohio St. 28, 106 N.E. 665 (1913); DeBlois v. Clark, 764 A.2d 727 (R.I. 2001).

<sup>2</sup>DeBlois v. Clark, 764 A.2d 727 (R.I. 2001).

<sup>3</sup>DeBlois v. Clark, 764 A.2d 727 (R.I. 2001);

Cooper's Adm'r v. Commonwealth, 121 Va. 338, 93 S.E. 680 (1917).

#### [Section 68]

<sup>1</sup>Gilbert v. David, 235 U.S. 561, 35 S. Ct. 164, 59 L. Ed. 360 (1915); Croop v. Walton, 199 Ind. 262, 157 N.E. 275, 53 A.L.R. 1386 (1927); Moore v. Hayes, 1987 OK 82, 744 P.2d 934 (Okla. 1987).

<sup>2</sup>Matter of Estate of Burshiem, 483 N.W.2d 175 (N.D. 1992).

<sup>3</sup>Gallagher v. Board of Sup'rs of Elections, 219 Md. 192, 148 A.2d 390 (1959).

## § 69 Question of law or fact

### Research References

West's Key Number Digest, Domicile ☞11

In some jurisdictions, the determination of domicile is a mixed question of fact and law.<sup>1</sup>

In other jurisdictions, the determination of domicile or legal residence is a question of fact, which will not be reversed on appeal unless clearly erroneous.<sup>2</sup>

◆ **Observation:** A person's intent is a question of fact,<sup>3</sup> but whether that intent gave rise to a particular legal status is a question of law.<sup>4</sup>

## § 70 Effect of judgment fixing domicile

### Research References

West's Key Number Digest, Domicile ☞11

Answer, demurrer, or pleas in abatement—Personal jurisdiction lacking—No domicile. Am. Jur. Pleading and Practice Forms, Domicil § 15

Neither the Fourteenth Amendment nor the Full Faith and Credit Clause of the Federal Constitution requires uniformity in the decisions of the courts of different states on questions of domicile, if the power of the state is dependent upon domicile within the boundaries of the state.<sup>1</sup>

Generally, as between the parties and their privies in a proceeding in which domicile is contested, a judgment of the state determining the question of domicile is conclusive and precludes such persons from raising the issue in another state.<sup>2</sup>

#### [Section 69]

<sup>1</sup>Matter of Brunner's Estate, 41 N.Y.2d 917, 394 N.Y.S.2d 621, 363 N.E.2d 346 (1977); State ex rel. Jealous of Him v. Mills, 2001 SD 65, 627 N.W.2d 790 (S.D. 2001).

In determining domicile of an individual, what state of facts constitutes a change of domicile is a mixed question of law and fact. Harris v. McKenzie, 703 So. 2d 309 (Ala. 1997).

<sup>2</sup>B.R.T. v. Executive Director of Social Service Bd. North Dakota, 391 N.W.2d 594 (N.D. 1986); Moore v. Hayes, 1987 OK 82, 744 P.2d 934 (Okla. 1987).

Domicil is an issue of fact to be determined on a case-by-case inquiry. Dominique v. Favorite, 854 So. 2d 452 (La. Ct. App. 1st Cir. 2003), writ denied, 853 So. 2d 611 (La. 2003).

Generally, the determination of domicile is a question of fact; however, where the underlying facts are not in dispute, domicile is a question of law. Fowler v. Auto Club Insurance

Association, 254 Mich. App. 362, 656 N.W.2d 856 (2002).

<sup>3</sup>Garcia v. Angulo, 335 Md. 475, 644 A.2d 498 (1994); State ex rel. Jealous of Him v. Mills, 2001 SD 65, 627 N.W.2d 790 (S.D. 2001).

<sup>4</sup>Garcia v. Angulo, 335 Md. 475, 644 A.2d 498 (1994).

#### [Section 70]

<sup>1</sup>Worcester County Trust Co. v. Riley, 302 U.S. 292, 58 S. Ct. 185, 82 L. Ed. 268 (1937) (referring to U.S. Const. Amend 14 and U.S. Const. Art 4).

As to full faith and credit in the context of a foreign divorce, see Am. Jur. 2d, Divorce and Separation §§ 1156, 1157.

<sup>2</sup>In re Fischer's Estate, 118 N.J. Eq. 599, 180 A. 633 (Prerog. Ct. 1935); Hopper v. Nicholas, 106 Ohio St. 292, 1 Ohio L. Abs. 100, 140 N.E. 186 (1922).

As to collateral attack of a foreign divorce

---

due to party's lack of domicil, see Am. Jur. 2d, Divorce and Separation § 1167.